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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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ROBERT JYSTAD (Bar No. 187340)
JULIAN K. QUATTLEBAUM (Bar No. 214378)
JAMIE T. HALL (Bar No. 240183)
CHANNEL LAW GROUP, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802-4323
Telephone: (310) 982-7197
Facsimile: (562) 216-5090

Attorneys for Plaintiff,
AMERICAN TOWER CORPORATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

AMERICAN TOWER CORPORATION, A DELAWARE CORPORATION, Plaintiff, vs. THE CITY OF SAN DIEGO, CALIFORNIA, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, Defendant.	Case No. '08 CV 0864 JM WMc **COMPLAINT FOR DECLARATORY RELIEF, WRIT OF MANDAMUS, DAMAGES, COSTS, AND ATTORNEYS' FEES**

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

BRIEF STATEMENT OF THE CASE

1. Plaintiff American Tower Corporation, a Delaware corporation ("ATC"), hereby complains against Defendant, the City of San Diego, California, a political subdivision of the State of California ("City") and brings this action to redress and to remedy the City's violation of federal and state laws in its denial of Conditional Use Permit ("CUP") No. 296127 ("30th Place CUP") and Planned Development Permit ("PDP") No. 453612 related to a 130-foot monopole supporting wireless telecommunication antennas (the "30th Place Facility") located in the vicinity of 797 1/3 30th Place in the City. In addition, ATC brings this action to redress and to remedy the City's violation of federal and state laws in its denial of Conditional Use Permit ("CUP") No. 292627 ("Mt. Ada CUP") and Site Development Permit ("SDP") No. 450714 related to a 145-foot monopole supporting wireless telecommunication antennas (the "Mt. Ada Facility") located in the vicinity of 6426 Mt. Ada Road in the City and the City's failure to grant ATC's request for a PDP in connection with its Mt. Ada CUP application.

2. ATC seeks a declaration from the Court that the decision issued by the San Diego City Council ("City Council") on ATC's appeal of the denial by the City's Planning Commission (the "Planning Commission") of the 30th Place CUP and PDP, the City Council's denial of the Mt. Ada CUP and SDP, and the City Council's failure to consider ATC's request for a PDP for the Mt. Ada Facility violate the federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (as so amended, the "Communications Act"), specifically multiple provisions of 47 U.S.C. § 332. ATC also seeks a declaration that the City's actions are violative of ATC's rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Additionally, ATC seeks a declaration that the permits sought by ATC are deemed granted under the California Permit Streamlining Act, California Government Code §§ 65920 *et seq.* ("PSA") (or in the alternative a writ of mandate ordering the City to issue the CUPs and/or such other permit or permits as may be necessary for the continued maintenance and operation of ATC's 30th Place Facility and Mt. Ada Facility), as well as damages, attorney's fees and costs.

3. There is currently pending before this Court a related action brought by ATC

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100 Oceangate, Suite 1400
Long Beach, CA 90802

against the City and certain related defendants (*American Tower Corporation v. City of San Diego, et al.*, Case No. 07cv0399 LAB (NLS)) and a second related action brought by ATC, TMO CA/NV, LLC and Omnipoint Communications, Inc. against the City (*American Tower Corporation, et al. v. City of San Diego, et al.*, Case No. 08cv0435 LAB (NLS))

JURISDICTION AND VENUE

4. This action arises under the laws of the United States and the State of California, including the federal Supremacy Clause, U.S. Const. art. VI, cl. 2; the Fourteenth Amendment to the United States Constitution; the Communications Act, 47 U.S.C. §§ 151 *et seq.*, and the California Permit Streamlining Act, California Government Code §§ 65920 *et seq.* The Court has primary jurisdiction over federal law claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and over state law claims pursuant to 28 U.S.C. § 1332 (diversity jurisdiction). Plaintiff and Defendant are citizens of different states, and the amount in controversy and the value of the rights at issue in this action exceed the sum of $75,000 exclusive of interest and costs. The Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367. The Court's authority to grant declaratory relief is based upon 28 U.S.C. § 2201. The Court's authority to grant mandamus relief is based upon its inherent authority under the Communications Act or, in the alternative, California Code of Civil Procedure § 1094.5.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the Defendant resides within the Southern District of California and a substantial part of the events or omissions giving rise to the claim occurred within the Southern District of California.

PARTIES

6. Plaintiff ATC is a corporation duly organized, existing and operating under the laws of the State of Delaware and is authorized to do, and is doing, business within the State of California. ATC has its principal place of business at 116 Huntington Avenue, Boston, Massachusetts 02116. ATC is an independent owner, operator and developer of broadcast and wireless communications sites in the United States, Mexico and Brazil. ATC owns and operates over 22,000 sites in the United States, Mexico and Brazil. Additionally, ATC manages approximately 2,000 rooftop and tower sites owned by other parties.

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7. ATC owns or manages telecommunications infrastructure, including telecommunication towers such as the Mt. Ada Facility and the 30th Place Facility (the "Denied Facilities"), and its customers are usually wireless carriers, that is, providers of personal wireless services or commercial mobile radio services, and include, among others, Sprint-Nextel Corporation, AT&T, Verizon Wireless, T-Mobile, MetroPCS Communications, Inc., and Leap Wireless International, LLC (doing business in the San Diego market under the trade name "Cricket"). ATC's infrastructure constitutes "personal wireless service facilities" within the ambit of 47 U.S.C. § 332(c)(7)(B).

8. Defendant City of San Diego, California is a charter city organized under the laws and Constitution of the State of California. In taking the actions complained of herein, the City acted through, among others, the City Council, the Planning Commission, the Development Services Department ("DSD") and certain staff, employees and agents responsible to these entities.

FACTUAL BACKGROUND

I. ATC'S CONDITIONAL USE PERMITS

9. The 30th Place Facility was constructed by ATC's predecessor in interest pursuant to CUP No. 84-0469 (the "Original 30th Place CUP"), which was granted by the City Council on November 20, 1984. A true and correct copy of the Original 30th Place CUP is attached as Exhibit 1.

10. The Mt. Ada Facility was constructed by ATC's predecessor in interest pursuant to CUP No. 83-0629 (the "Original Mt. Ada CUP"), which was granted by the City Council on November 20, 1984. A true and correct copy of the Original Mt. Ada CUP is attached as Exhibit 2.

11. Both the Original 30th Place CUP and the Original Mt. Ada CUP contemplated extensions of their terms, specifically providing, "If an extension is requested, the operation and conditions shall be reviewed at public hearings by the Planning Commission and City Council."

12. Over the past several years, the City has revised its regulatory scheme and sought to impose on ATC and its tenants an increasingly burdensome regulatory structure. Despite the

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Long Beach, CA 90802

language in the Original 30th Place CUP and the Original Mt. Ada CUP specifically contemplating extensions thereof and numerous examples of the City having granted extensions with respect to other CUPs governed by the same provisions of the City's Land Development Code as the Denied Facilities, the City has claimed it does not permit extensions and has refused to allow ATC to renew or extend its CUPs. The City's DSD staff has repeatedly asserted that the revised regulations require ATC either to remove its Facilities or to reduce and replace its Facilities with decorative or architecturally designed structures at substantially reduced height and at tremendous cost and impact to ATC and its tenants.

13. The City claims that its regulations classify the Denied Facilities as "major telecommunication facilities," which, under the City's existing nomenclature, are a subclass of "communication antennas." In an effort to demonstrate good faith with the City and in order to ensure the continued operation of the 30th Place, Mt. Ada and other Facilities, ATC filed multiple CUP applications under protest, reserving its right to challenge the City's permitting requirements ("Protest Applications"). ATC proposed in these Protest Applications to make reasonable modifications to the landscaping and equipment, but ATC did not propose to lower the Facilities or to replace the Facilities with decorative or new architecturally designed structures.

14. On or about December 21, 2005 ATC, as successor in interest to the owner of the 30th Place Facility, submitted an application for an extension of the Original 30th Place CUP or, in the alternative, a new CUP, and also requested approval of a PDP. ATC's completed General Application form and Site Justification Letter, submitted as part of its application, are attached hereto as Exhibit 3. The application was deemed complete on December 27, 2005. The City determined that the project was exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code)) ("CEQA") on February 8, 2006. A true and correct copy of the City's Determination of Environmental Exemption is attached as Exhibit 4. On June 28, 2007, at a properly noticed public hearing, the Planning Commission voted to deny the CUP and PDP requested by ATC. This was the first time the City had acted to approve or deny ATC's 30th Place CUP and PDP.

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15. On or about December 9, 2005, ATC, as successor in interest to the owner of the Mt. Ada Facility, submitted an application for an extension of the Original Mt. Ada CUP and also requested approval of a PDP. ATC's completed General Application form and Site Justification Letter, submitted as part of its application, are attached hereto as Exhibit 5. The application was deemed complete on December 12, 2005. The City determined that the project was exempt from CEQA on January 23, 2006. A true and correct copy of the City's Determination of Environmental Exemption is attached as Exhibit 6. On April 14, 2008, at a properly noticed public hearing, the City Council voted to deny the ATC's CUP and SDP. This was the first time the City had acted to approve or deny ATC's Mt. Ada CUP. The City has not yet acted to approve or deny the PDP requested by ATC for its Mt. Ada Facility.

16. In response to the Protest Applications, the DSD issued project assessment letters ("Assessment Letters") that, among other things, imposed unlawful requirements on ATC that created unreasonable delays in the processing of ATC's applications. ATC objected to the findings in the Assessment Letters and sought meetings on several occasions with City staff to address its objections. ATC has expended substantial time and resources in response to directives arising out of these meetings only to find out that the City subsequently altered those directives, adopted contradictory directives or disavowed having made its prior directives. To avoid further delays, ATC requested that staff forward the Protest Applications to the Planning Commission "as is." The DSD communicated to ATC that a recommendation of denial would accompany the applications on grounds that staff could not make findings necessary to support the applications, despite the fact that, earlier in the process, the City specifically represented to ATC's representatives that staff had the discretion to recommend approval without requiring replacement of the facilities.

17. On or about June 24, 2005, ATC's predecessor, SpectraSite Communications, Inc., met with Senior Planner Karen Lynch-Ashcraft and Planning Intern Simon Tse at the DSD to discuss the renewal of its CUPs. Ms. Lynch-Ashcraft identified Mr. Tse as the principal point of contact on CUP renewals. The goal of the meeting was to enlist the cooperation of the City in moving renewals forward on a timely basis, to request that SpectraSite be allowed to prioritize

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100 Oceangate, Suite 1400
Long Beach, CA 90802

sites on the basis of expiration dates and new tenant interest and overall to demonstrate to the City SpectraSite's desire to be upfront with the City in addressing renewal and compliance issues and to work in partnership with tower tenants, the City staff and the community to achieve a mutually satisfactory outcome.

18. In a follow-up e-mail communication, Mr. Tse reported to ATC, which had since acquired SpectraSite, that three of the CUPs for which SpectraSite had sought renewal had expired. In response to a SpectraSite inquiry regarding the amount of time it took to renew CUPs, Mr. Tse responded: "In general, you are looking at a minimum of 6 months depending on the project. If you have a specific site you are referring to let me know so I can get a better time frame, but overall CUP renewals through commission hearings will take quite at least 6 months if not more."

19. On or about March 20, 2006, ATC and several wireless carriers met with the City in order to object to the oppressive conclusions drawn in the Assessment Letters and to discuss the absence of City guidelines governing CUP renewals. At the conclusion of the meeting, the City agreed to extend the terms of any expired CUPs to June 1, 2007. The purpose of the extension was to give the City sufficient time to develop CUP renewal guidelines. Letter from Robert Jystad to Mr. James Waring dated March 3, 2006, attached as Exhibit 7.

20. As indicated above, on June 28, 2007, the Planning Commission voted to deny the 30th Place CUP and PDP requested by ATC and to recommend that the City Council deny the Mt. Ada CUP. On July 11, 2007, ATC timely appealed the Planning Commission's denial of the 30th Place CUP to the City Council. As part of its presentations to both the Planning Commission and the City Council, ATC proposed certain modifications to the Denied Facilities in an attempt to respond to the City's alleged concerns about aesthetics.

21. As indicated above, on April 14, 2008, the City Council denied the Mt. Ada CUP and a related Site Development Permit. The City Council has never ruled on ATC's request for a PDP made in connection with its requests for the Mt. Ada CUP. At that same April 14, 2008 hearing, the City Council also denied ATC's appeal of the Planning Commission's denial of its 30th Place CUP.

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Long Beach, CA 90802

22. To date, despite its votes at the April 14, 2008 hearing, the City Council has failed to approve the minutes of such meeting or to issue a written resolution embodying its decision. Attached as Exhibit 8 is a true and correct copy of a document entitled "City Council Meeting Results" downloaded from the City's web site which evidences the votes of the City Council at its April 14, 2008 meeting. The document states: "This is a summary of the actions taken by the City Council. It is NOT equivalent to the Minutes which, when approved by the City Council, constitute the official record of the meeting."

23. The actions taken by the City Council on ATC's 30th Place CUP and Mt. Ada CUP are final and nonappealable to any higher authority within the City. ATC, therefore, is compelled to bring this litigation challenging the City's final decisions on ATC's applications as unlawful under federal and state law.

II. THE CITY OF SAN DIEGO LAND DEVELOPMENT CODE

24. ATC's applications for the 30th Place and Mt. Ada Facilities are governed by § 141.0405 of the City's Land Development Code as it was in effect prior to April 11, 2007 ("Prior § 141.0405"). A true and correct copy of said section as then in effect is attached hereto as Exhibit 9.

25. Prior § 141.0405 governed Communication Antennas and imposed varying requirements on "minor telecommunication facilities" and "major telecommunication facilities."

26. Under Prior § 141.0405, "minor telecommunication facilities" were required to be "concealed from public view or integrated into the architecture or surrounding environment through architectural enhancements (enhancements that complement the scale, texture, color, and style), unique design solutions, or accessory use structures." San Diego Mun. Code § 141.0405(e)(1) as in effect prior to April 11, 2007.

27. In contrast, the requirements for approval of "major telecommunication facilities" (*i.e.*, communication antennas that did not qualify as "minor telecommunication facilities") other than certain locational restrictions not applicable to the Denied Facilities, were merely that they be "designed to be minimally visible through the use of architecture, landscape architecture, and siting solutions" and that they "use the smallest and least visually intrusive antennas and

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Long Beach, CA 90802

components that meet the requirements of the facility." San Diego Mun. Code § 141.0405(f) as in effect prior to April 11, 2007.

28. Under § 126.0305 of the City's Land Development Code, the following are the findings required for a CUP: (a) The proposed development will not adversely affect the applicable land use plan; (b) The proposed development will not be detrimental to the public health, safety, and welfare; (c) The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code; and (d) The proposed use is appropriate at the proposed location. San Diego Mun. Code § 126.0305.

29. The purpose of a PDP is articulated in § 143.0401 of the Land Development Code: "The purpose of these regulations is to provide flexibility in the application of development regulations for projects where strict application of the base zone development regulations would restrict design options and result in a less desirable project." San Diego Mun. Code § 143.0401.

30. ATC has consistently pursued PDPs throughout the CUP review process, both in support of retention of the existing height and to permit any other nonconformance with the development regulations of the applicable zone necessary for the continued operation of the critical infrastructure represented by the Denied Facilities.

31. The findings required for a PDP under § 126.0604 of the Land Development Code are as follows: (a) The proposed development will not adversely affect the applicable land use plan; (b) The proposed development will not be detrimental to the public health safety and welfare; (c) The proposed development will comply with the applicable regulations of the Land Development Code; (d) The proposed development, when considered as a whole, will be beneficial to the community; and (e) Any proposed deviations pursuant to § 126.0602(b)(2) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. San Diego Mun. Code § 126.0604(a).

III. THE FEDERAL COMMUNICATIONS ACT

32. Congress adopted the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, and thereby created the Federal Communications Commission for, among other purposes, ". . .

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regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination . . . , a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies . . . ."

33. In 1996, Congress amended the Communications Act of 1934 by enacting the Telecommunications Act of 1996 ("TCA"). The TCA is expansive legislation intended to increase and improve competition in the telecommunications industry. An important purpose of the TCA, as described by the Conference Report to the Senate Bill, is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . . ." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 1 (1996).

34. Section 332(c)(7)(B)(i)(I) of the Communications Act states: "The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--shall not unreasonably discriminate among providers of functionally equivalent services."

35. Section 332(c)(7)(B)(i)(II) further provides that State or local government regulation of personal wireless service facilities "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

36. Section 332(c)(7)(B)(ii) provides that a State or local government shall "act on any request to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed . . . ."

37. Section 332(c)(7)(B)(iii) states that "any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record."

IV. THE PERMIT STREAMLINING ACT (CAL. GOV. CODE §§ 65920 *ET SEQ.*)

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38. Cal. Gov. Code § 65940(a) requires each state agency and each local agency to "compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project." The section also requires the information to "be made available to all applicants for development projects and to any person who requests the information."

39. Cal. Gov. Code § 65941(a) mandates: "The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project." All of this information is required, under Gov. Code § 65942, to be revised as necessary so as to "be current and accurate at all times." That section further provides: "Any revisions shall apply prospectively only and shall not be a basis for determining that an application is not complete . . . if the application was received before the revision is effective" with two narrow exceptions.

40. Although an agency is permitted to defer requiring some of the information needed until after the completion of the application, Cal. Gov. Code § 65944(a) prohibits an agency which has accepted an application as complete from subsequently requesting information not specified in the list. "Prior to accepting an application, each public agency shall inform the applicant of any information included in the list prepared pursuant to Section 65940 which will subsequently be required from the applicant in order to complete final action on the application." Gov. Code § 65944(b).

41. Cal. Gov. Code § 65943 sets forth the time limits for determining the completeness of an application. As to the initial submission of an application, subsection (a) of that section requires: "Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter."

42. Cal. Gov. Code § 65943(a) also requires the government agency to specify in detail

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the shortcomings of any application deemed incomplete:

"If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application."

43. Cal. Gov. Code §§ 65950-65952 sets forth mandatory time limits for approval or disapproval of a development project. Gov. Code § 65956(b) provides that in the event of a failure by an agency to meet the required deadlines for approval or disapproval, "the failure to act shall be deemed approval of the permit application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred." The statute provides specific means for the applicant to provide the required public notice if the lead agency fails to do so. Gov. Code § 65953 specifically *requires* agencies to act more quickly to the extent possible:

"All time limits specified in this article are maximum time limits for approving or disapproving development projects. All public agencies shall, if possible, approve or disapprove development projects in shorter periods of time."

The City has failed to comply with the Permit Streamlining Act's timing requirements both as to its limits on information that may be required and as to the time limits for action on ATC's requested CUPs and other permits.

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100 Oceangate, Suite 1400
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100 Oceangate, Suite 1400
Long Beach, CA 90802

SUMMARY OF HARM AND FACTS REQUIRING DECLARATORY AND INJUNCTIVE RELIEF

44. The foregoing allegations demonstrate that an actual controversy now exists between ATC and the City, due to the City's denial of ATC's CUPs. The City's denial violates and is preempted by federal and state law and is, therefore, void and invalid. An actual controversy also now exists as to whether ATC is entitled to an order compelling the City to issue appropriate permits for the continued operation of ATC's Denied Facilities forthwith. ATC's rights, status and other legal relations have been immediately and adversely affected by the City's actions.

45. As a result of the City's actions complained of herein, ATC has been, and will continue to be, absent the relief requested herein, damaged and irreparably harmed. The harm caused by the City's unlawful denial of ATC's CUPs includes, but is not limited to, the following: (a) ATC and the carrier utilizing the Denied Facilities, Verizon Wireless (hereinafter "Tenant") will be required to remove and/or replace their equipment currently in operation and currently providing wireless communication services; (b) ATC and its Tenant will be required to reconfigure wireless communication networks in order to accommodate the loss and/or modifications of the Denied Facilities; (c) ATC has expended substantial amounts of time and resources negotiating with the City over the renewal process applicable to its Denied Facilities; (d) ATC is being deprived of the full utilization of ATC's existing licenses and business investments, as well as lost revenue for services; (e) ATC will lose customers if it is forced to remove the Denied Facilities as a result of the denial of the Mt. Ada and 30th Place CUPs; and (f) ATC is being and will continue to be deprived of goodwill and business reputation, both present and future, if it is forced to remove the Denied Facilities.

COUNT I

Violation of Section 332(c)(7)(B)(i)(I) of the Communications Act

(47 U.S.C. § 332(c)(7)(B)(i)(I))

46. ATC incorporates herein by reference the allegations of paragraphs 1 through 45 above.

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47. 47 U.S.C. § 332(c)(7)(B)(i)(I) prohibits State and local governments from utilizing policies and procedures and from enacting regulations that "unreasonably discriminate among providers of functionally equivalent services."

48. On April 14, 2008, the City Council denied ATC's request for the 30th Place CUP and its appeal of the Planning Commission's denial of its Mt. Ada CUP on the grounds that the Denied Facilities do not comply with the provisions of its Land Development Code. The City, acting in its proprietary capacity, leases space on city-owned telecommunication towers for commercial purposes in and around the City in direct competition with ATC. The City exempts its towers from its Wireless Regulations. Some of these towers are monopoles of the same general design as ATC's Denied Facilities and are not distinguishable from ATC's Denied Facilities in terms of the criteria which form the basis of the City's denial of ATC's CUPs. The City has proffered no reasonable basis for differentiating these city facilities from ATC's Facilities. The City's denials of ATC's CUPs unreasonably discriminate against ATC, which provides functionally equivalent services to those provided by the City in making space available for lease on its Facilities for placement of commercial wireless antennas.

49. Accordingly, the City's denials of ATC's CUPs violate 47 U.S.C. § 332(c)(7)(B)(i)(I) and should be set aside on those grounds.

COUNT II

Violation of Section 332(c)(7)(B)(i)(II) of the Communications Act

(47 U.S.C. § 332(c)(7)(B)(i)(II))

50. ATC incorporates herein by reference the allegations of paragraphs 1 through 49 above.

51. 47 U.S.C. § 332(c)(7)(B)(i)(II) provides that any regulation of personal wireless service facilities shall not "prohibit or have the effect of prohibiting the provision of personal wireless service."

52. The Denied Facilities, as well as others, are existing facilities that comprise the backbone of ATC's carrier customers' networks in the City of San Diego. Removal of the Denied Facilities will have a substantial impact on its Tenant's network, resulting in significant gaps in service where no such gaps currently exist. The Denied Facilities are existing facilities that have already been determined to comply with City requirements. No changes have occurred to the areas in which the Denied Facilities are located that warrant replacement or relocation.

53. The denial of ATC's request for CUPs to continue operation of the Denied Facilities, if upheld, will result in the creation of significant gaps in services for its Tenant, as shown by uncontroverted evidence in the record. Furthermore, the manner in which the existing Facilities currently fill those significant gaps is the least intrusive on the values addressed by the applicable provisions of the City's Land Development Code. In addition, the least intrusive alternative test requires a special application in the context of this case. Where facilities have already been deployed in the formation of a complex wireless network, forced removal of these facilities solely on subjective and arbitrary aesthetic grounds, which removal would result in new gaps in services and the need for extensive network reconfiguration with new land use impacts and at best uncertain permitting prospects, should constitute effective prohibition of services under § 332(c)(7)(B)(i)(II), and the City's denial should be set aside on those grounds.

54. Accordingly, the City's denials of ATC's CUPs should be found to be in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II) and set aside, and the requested CUPs should be ordered to be granted.

COUNT III

Violation of Section 332(c)(7)(B)(ii) of the Communications Act

(47 U.S.C. § 332(c)(7)(B)(ii))

55. ATC incorporates herein by reference the allegations of paragraphs 1 through 54 above.

56. 47 U.S.C. § 332(c)(7)(B)(ii) requires that a local government "act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request."

57. It has been more than two years since ATC applied for a PDP for the 30th Place Facility. Despite numerous hearings and decisions by both the Planning Commission and the

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100 Oceangate, Suite 1400
Long Beach, CA 90802

City Council on ATC's application for a CUP, the City has not made any decision on ATC's request for a PDP. This delay violates the provisions of the PSA and is unreasonable.

58. Accordingly the City's failure to approve ATC's PDP should be found to be in violation of 47 U.S.C. § 332(c)(7)(B)(ii), and the Court should order the City to issue the requested PDP.

COUNT IV

Violation of Section 332(c)(7)(B)(iii) of the Communications Act

(47 U.S.C. § 332(c)(7)(B)(iii))

59. ATC incorporates herein by reference the allegations of paragraphs 1 through 58 above.

60. 47 U.S.C. § 332(c)(7)(B)(iii) requires that any decision by a State or local government to deny a request to place, construct, or modify personal wireless service facilities "shall be in writing and supported by substantial evidence contained in a written record."

61. On April 14, 2008, the City Council finally denied ATC's requests for the 30th Place and Mt. Ada CUPs. However, the City Council has failed to adopt a written decision or written findings, and its decisions were based on conclusory findings which were not supported by substantial evidence in the record. The decisions of the Planning Commission and City Council were also tainted by staff's insistence on requirements related to the CUP application that were unlawful in light of the City's failure to comply with the Permit Streamlining Act. Furthermore, the Planning Commission and the City Council, in making their decisions, failed to follow the applicable requirements of the City's Land Development Code. While the City Council has not issued written findings in support of its decisions, it is clear that they were based on requirements such as "integration" and "concealment" that are applicable to minor telecommunication facilities. However, the Mt. Ada and 30th Place Facilities were processed by the City not as a "minor telecommunication facilities," but rather as a "major telecommunication facilities."

62. In addition, both the Planning Commission and the City Council failed to consider the qualification found in the required findings for issuance of a CUP that the development need only comply with the regulations of the Land Development Code "to the maximum extent

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feasible." Land Development Code § 126.0305(c). The record contains no evidence of any analysis (other than speculation) by the Planning Commission or the City's staff of whether it was "feasible" to comply with the requirements of the Land Development Code to any greater extent than the facility already did, and the City ignored expert testimony that it was not feasible to do so. It also failed to even consider the applicability of the Land Development Code's provisions regarding PDPs to the 30th Place Facility, which, as indicated above, provide flexibility to avoid "strict application of the base zone development regulations."

63. Accordingly, the City's actions should be found in violation of 47 U.S.C. § 332 (c)(7)(B)(iii) and set aside, and the requested permits should be ordered to be granted.

COUNT V

Mandamus

(Inherent Authority or Cal. Code Civ. Pro. § 1094.5)

64. ATC incorporates herein by reference the allegations of paragraphs 1 through 63 above.

65. ATC brings the Count for Mandamus pursuant to the Court's inherent authority under the federal Communications Act, or, in the alternative, Cal. Code of Civ. Pro. § 1094.5. In either event, this court has jurisdiction to hear this claim under 28 U.S.C. §§ 1331 and 1332, and under the supplemental jurisdiction conferred by 28 U.S.C. § 1367(a).

66. The City, in denying ATC's CUPs, has violated federal and state law as set forth in this Complaint. The City therefore is under a mandatory duty to issue CUPs to permit ATC to continue to maintain and operate the Denied Facilities.

67. ATC is beneficially interested in the issuance of a writ of mandamus. As the applicant for the CUP at issue, ATC's rights and interests have been and will be adversely affected, and the full use and enjoyment of its property will be denied, unless the City is compelled by the Court to issue CUPs to permit ATC to continue to maintain and operate the Denied Facilities. Furthermore, the removal of the Denied Facilities will permit the City to eliminate competition for tenants of its antenna space and will enable the City to charge noncompetitive prices.

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68. ATC respectfully requests that the Court issue a writ of mandamus pursuant to its inherent authority under the Communications Act, or, in the alternative § 1094.5, compelling the City thereby to issue CUPs to permit ATC to continue to maintain and operate the Mt. Ada Facility and 30th Place Facility.

COUNT VI

Violation of Equal Protection under the Fourteenth Amendment to the Constitution of the United States (U.S. Const. amend. XIV)

69. ATC incorporates herein by reference the allegations of paragraphs 1 through 68 above.

70. Amendment XIV to the United States Constitution provides, in pertinent part, that no State shall "deprive a person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws." Thus, ATC is entitled to the equal protection of the laws, and to be free from unlawful discrimination in statutory classifications and other governmental activities.

71. The City's commercial activities related to the leasing of space on its telecommunications towers for third-party commercial antennas, as indicated above, is directly competitive and indistinguishable on any rational basis from the commercial activities in which ATC utilizes the Denied Facilities.

72. However, the City, acting in an arbitrary and capricious manner, has imposed requirements on ATC in the conduct of its commercial activities from which the City has exempted itself.

73. The allegations set forth above demonstrate that the City has violated ATC's equal protection rights by imposing requirements upon and taking or failing to take action with respect to ATC's Facilities which it has not imposed on or taken or failed to take with respect to the City's own telecommunications towers, even when such towers are being utilized in a proprietary, nongovernmental capacity. There is no rational basis for the City's distinction between the City's towers and activities and those of ATC. The City's imposition of special

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requirements and its denial of permits necessary for ATC to continue to operate the Denied Facilities constitute a denial of ATC's right to equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution.

74. Accordingly, the City's action should be declared to be a denial of ATC's rights to equal protection, and should be set aside and enjoined by the Court on that basis. Further, the Court should issue an order commanding the City to grant appropriate permits so that ATC may continue to maintain and operate the Denied Facilities.

COUNT VII

Deemed Approval of Permits under

the California Permit Streamlining Act

(U.S. Const. amend. XIV)

75. ATC incorporates herein by reference the allegations of paragraphs 1 through 74 above.

76. Under the PSA, specifically Gov. Code § 65950(a)(4), the City was required to approve or disapprove ATC's applications within 60 days from the date that the City determined each project was exempt from the California Environmental Quality Act. The City failed to do so.

77. Gov. Code § 65956(b) provides that in the event of a failure by an agency such as the City to meet the required deadlines for approval or disapproval, "the failure to act shall be deemed approval of the permit application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred." All of the required public notices were given. Exhibit 10 contains copies of those notices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

1. Under Count I, that the Court issue an Order declaring that the City's denial of ATC's CUPs constitutes unreasonable discrimination under 47 U.S.C. § 332(c)(7)(B)(i)(I) and, therefore, is void, invalid, and unenforceable;

2. Under Count II, that the Court issue an Order declaring that the City's denial of

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ATC's CUPs constitutes actual or effective prohibition under 47 U.S.C. § 332(c)(7)(B)(i)(II) and, therefore, is void, invalid, and unenforceable;

3. Under Count III, that the Court issue an Order declaring the City has failed to act on ATC's request for a PDP for its 30th Place Facility within a reasonable period of time in violation of 47 U.S.C. § 332(c)(7)(B)(ii);

4. Under Count IV, that the Court issue an Order declaring that the City's denial of ATC's CUP is not supported by substantial evidence in a written record as required by 47 U.S.C. § 332(c)(7)(B)(iii) and, therefore, is void, invalid, and unenforceable;

5. Under Count V, that the Court issue a writ of mandamus pursuant to its inherent authority under the Communications Act, or in the alternative, under Cal. Code. Civ. Pro. § 1094.5 ordering the City to grant ATC its requested CUPs and/or such other permit or permits as may be necessary for the continued maintenance and operation of the Mt. Ada Facility and the 30th Place Facility;

6. Under Count VI, that the Court issue an Order declaring that the City's differential treatment of ATC's towers and those of the City utilized by it in competition with ATC is violative of ATC's rights to equal protection under the Fourteenth Amendment to the U.S. Constitution;

7. Under Count VII, that the Court issue an Order declaring that the CUPs sought by ATC for the Denied Facilities are deemed granted under the PSA;

8. For costs of suit;

9. For damages in an amount to be established by the evidence;

10. For attorneys' fees (including expert fees) in accordance with the provisions of 42 U.S.C. § 1988 and as may be otherwise provided by law for the violation of ATC's rights, privileges and immunities; and

11. For such other and further relief as the court may deem just and proper.

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Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

Respectfully submitted,

Dated: May 13, 2008

CHANNEL LAW GROUP, LLP

Julian Quattlebaum
Attorney for Plaintiff
American Tower Corporation

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT LIST

Number	Exhibit
1	CUP No. 84-0469
2	CUP No. 83-0629
3	General Application Form and Site Justification Letter for 30th Place Facility
4	Determination of Environmental Exemption for 30th Place Facility
5	General Application Form and Site Justification Letter for Mt. Ada Facility
6	Determination of Environmental Exemption for Mt. Ada Facility
7	Letter from Robert Jystad, Esq., to James Waring dated March 3, 2006
8	City Council Meeting Results for Meeting of April 14, 2008
9	Land Development Code § 141.0405 as in effect prior to April 11, 2007
10	Public Notices

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100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT 1

PLANNING COMMISSION RESOLUTION NO. 5280

APPROVING CONDITIONAL USE PERMIT NO. 84-0469

WHEREAS, PAC TEL MOBILE ACCESS, a Delaware corporation, Owner/Permittee, filed an application for a conditional use permit to construct and maintain a telephone transmitting and receiving facility consisting of an equipment building and an antenna tower located on the south side of State Highway 94, at 30th Place, described as Lot 2, Hilltop, Map 5357, and Lots 15 to 18, Block 97, E. W. Morse Subdivision, Map 547, in the Southeast San Diego community, in the CC and R-3000 zones; and

WHEREAS, on October 25, 1984, the Planning Commission of The City of San Diego considered Conditional Use Permit No. 84-0469, pursuant to Section 101.0506 of the Municipal Code of The City of San Diego, received documentary, written and oral testimony for consideration and heard from all interested parties present at the public hearing; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of The City of San Diego that the following findings are hereby adopted as the findings of the Planning Commission:

1. The proposed project will not adversely affect the neighborhood, the General Plan and the community plans and will not be detrimental to the health, safety and general welfare of persons residing or working in the area.

2. The proposed use would comply with all the relevant regulations of the Municipal Code. Section 101.0507 of the Municipal Code of San Diego, Paragraph A.7, grants the Planning Commission authority to approve the proposed facilities with a conditional use permit, subject to appropriate conditions of approval. The Commission believes that appropriate conditions are included that would sufficiently reduce the negative visual impact of the proposed project.

BE IT FURTHER RESOLVED that said findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, the application for Conditional Use Permit No. 84-0469 is hereby APPROVED, and the Planning Commission hereby RECOMMENDS to the City Council that it be granted in the form and with the terms and conditions set forth in the draft permit attached hereto.

Sue Blackman

Sue Blackman, Secretary to the Planning Commission

Nick Osler

Nick Osler, Senior Planner Planning Department

PLANNING COMMISSION RESOLUTION NO. 5280

APPROVING CONDITIONAL USE PERMIT NO. 84-0469

WHEREAS, PAC TEL MOBILE ACCESS, a Delaware corporation, Owner/Permittee, filed an application for a conditional use permit to construct and maintain a telephone transmitting and receiving facility consisting of an equipment building and an antenna tower located on the south side of State Highway 94, at 30th Place, described as Lot 2, Hilltop, Map 5357, and Lots 15 to 18, Block 97, E. W. Morse Subdivision, Map 547, in the Southeast San Diego community, in the CC and R-3000 zones; and

WHEREAS, on October 25, 1984, the Planning Commission of The City of San Diego considered Conditional Use Permit No. 84-0469, pursuant to Section 101.0506 of the Municipal Code of The City of San Diego, received documentary, written and oral testimony for consideration and heard from all interested parties present at the public hearing; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of The City of San Diego that the following findings are hereby adopted as the findings of the Planning Commission:

1. The proposed project will not adversely affect the neighborhood, the General Plan and the community plans and will not be detrimental to the health, safety and general welfare of persons residing or working in the area.

2. The proposed use would comply with all the relevant regulations of the Municipal Code. Section 101.0507 of the Municipal Code of San Diego, Paragraph A.7, grants the Planning Commission authority to approve the proposed facilities with a conditional use permit, subject to appropriate conditions of approval. The Commission believes that appropriate conditions are included that would sufficiently reduce the negative visual impact of the proposed project.

BE IT FURTHER RESOLVED that said findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, the application for Conditional Use Permit No. 84-0469 is hereby APPROVED, and the Planning Commission hereby RECOMMENDS to the City Council that it be granted in the form and with the terms and conditions set forth in the draft permit attached hereto.

Sue Blackman, Secretary to the Planning Commission

Nick Osler, Senior Planner
Planning Department

Exhibit 1
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CONDITIONAL USE PERMIT
NO. 84-0469
CITY COUNCIL
(AS RECOMMENDED BY PLANNING COMMISSION)

This Conditional Use Permit is granted by the City Council of The City of San Diego to PACTEL MOBILE ACCESS, a Delaware Corporation, Owner/Permittee, under the conditions in Section 101.0506 of the Municipal Code of The City of San Diego.

1. Permission is granted to Owner/Permittee to construct and operate a communication facility consisting of an equipment building and antenna tower located on the south side of State Highway 94 at 30th Place, more particularly described as Lot 2, Hilltop, Map 5357 and Lots 15 to 18, Block 97, E.W. Morse Subdivision, Map 547, in the CC and R-3000 Zones.

2. The facility shall consist of the following:

   a. A 26-foot by 22-foot equipment building and a 145-foot-high antenna tower for frequency reception and transmission. The color of the pole shall be cool medium-light grey;

   b. Off-street parking for service personnel; and

   c. Accessory uses as may be determined incidental and approved by the Planning Director.

3. Not less than two off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. Parking spaces shall be consistent with Division 8 of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Planning Department standards. Parking areas shall be marked.

4. No permit for construction of the expanded facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

   a. The Permittee signs and returns the amended permit to the Planning Department; and

   b. The Conditional Use Permit is recorded in the office of the County Recorder.

5. Before issuance of any building permits, complete building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications for amendment of this permit shall have been granted.

6. Before issuance of any building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Planning Director for approval. The plans shall be in substantial conformity to Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended. Specific plant species shall be identified on final landscaping plans and shall be subject to Planning Director approval.

7. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located and not reflect onto adjacent properties.

8. This Conditional Use Permit must be used within 36 months after the date of City approval or the permit shall be void. An Extension of Time may be granted as set forth in Section 101.0506 and 101.0507 of the Municipal Code. Such extension of time shall be subject to all regulations in force at the time of the extension.

9. After establishment of the amended project, the property shall not be used for any other purposes unless:

a. Authorized by the City Council; or

b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or

c. The permit has been revoked by the City.

10. This Conditional Use Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.

11. This Conditional Use Permit is a covenant running with the lands and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

12. This permit shall expire five years from the date of approval. If an extension is requested, the operation and conditions shall be reviewed at public hearings by the Planning Commission and City Council.

13. In the event that additional cellular mobile phone communication systems are needed in the future that would require a transmitting tower or towers in the vicinity of this approved facility, the permittee shall allow the installation of antennas on the tower authorized by this permit and the installation of necessary support equipment on the premises, if such additional antennas and support equipment are approved by the City of San Diego following a noticed public hearing on the matter.

14. The existing billboards on the site are to be removed prior to the mobile phone facilities becoming operational on the property if legally obtainable. However, in no event shall renewal of any contract/agreement for retention of the billboards be undertaken by the permittee and/or land owner or authorization for continued use beyond the current contract/agreement be permitted on the site.

ADOPTED BY THE COUNCIL OF THE CITY OF SAN DIEGO (as recommended by the PLANNING COMMISSION) ON ______________________ .

ORIGINAL

1684

CONDITIONAL USE PERMIT
NO. 84-0469
CITY COUNCIL

This Conditional Use Permit is granted by the City Council of The City of San Diego to PACTEL MOBILE ACCESS, a Delaware Corporation, Owner/Permittee, under the conditions in Section 101.0507 of the Municipal Code of The City of San Diego.

1. Permission is granted to Owner/Permittee to construct and operate a communication facility consisting of an equipment building and antenna tower located on the south side of State Highway 94 at 30th Place, more particularly described as Lot 2, Hilltop, Map 5357 and Lots 15 to 18, Block 97, E.W. Morse Subdivision, Map 547, in the CC and R-3000 Zones.

2. The facility shall consist of the following:

   a. A 26-foot by 22-foot equipment building and a 145-foot-high antenna tower for frequency reception and transmission. The color of the pole shall be cool medium-light grey;

   b. Off-street parking for service personnel; and

   c. Accessory uses as may be determined incidental and approved by the Planning Director.

3. Not less than two off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. Parking spaces shall be consistent with Division 8 of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Planning Department standards. Parking areas shall be marked.

4. No permit for construction of the expanded facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

   a. The Permittee signs and returns the amended permit to the Planning Department; and

   b. The Conditional Use Permit is recorded in the office of the County Recorder.

SAN DIEGO, CALIF. 16
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Exhibit 1
Page 27 of 84

5. Before issuance of any building permits, complete building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications for amendment of this permit shall have been granted.

6. Before issuance of any building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Planning Director for approval. The plans shall be in substantial conformity to Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended. Specific plant species shall be identified on final landscaping plans and shall be subject to Planning Director approval.

7. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located and not reflect onto adjacent properties.

8. This Conditional Use Permit must be used within 36 months after the date of City approval or the permit shall be void. An Extension of Time may be granted as set forth in Section 101.0506 and 101.0507 of the Municipal Code. Such extension of time shall be subject to all regulations in force at the time of the extension.

9. After establishment of the amended project, the property shall not be used for any other purposes unless:

a. Authorized by the City Council; or

b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or

c. The permit has been revoked by the City.

10. This Conditional Use Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.

11. This Conditional Use Permit is a covenant running with the lands and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

12. This permit shall expire 20 years from the date of approval. If an extension is requested, the operation and conditions shall be reviewed at public hearings by the Planning Commission and City Council.

13. In the event that additional cellular mobile phone communication systems are needed in the future that would require a transmitting tower or towers in the vicinity of this approved facility, the permittee shall allow the installation of antennas on the tower authorized by this permit and the installation of necessary support equipment on the premises if the applicant for such additional antennae and support equipment shows that the operation thereof would not interfere with the operation of the permittee's antennae and support equipment and the co-location of such antennae and support equipment are otherwise technically feasible and compatible, and such additional antennae and support equipment are approved by The City of San Diego following a noticed public hearing on the matter.

14. The existing billboards shall be removed no later than October 1986 from the site.

ADOPTED BY THE COUNCIL OF THE CITY OF SAN DIEGO ON NOVEMBER 20, 1984.

1687

AUTHENTICATED BY:

Roger Hedgecock
Mayor of The City of San Diego

City Clerk of The City of San Diego

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On this 13th day of ~~December, 1984,~~ February 1985 before me, the undersigned, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ROGER HEDGECOCK, known to me to be the Mayor, and CHARLES G. ABDELNOUR, known to me to be the City Clerk of The City of San Diego, the municipal corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the County of San Diego, State of California, the day and year in this certificate first above written.

RUTH E. KLAUER
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires May 23, 1985

Ruth E Klauer
Notary Public in and for the County of San Diego, State of California

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Conditional Use Permit and promises to perform each and every obligation of Permittee hereunder.

PACTEL MOBIL ACCESS, INC.
a Delaware corporation

By ______________________

NOTE: NOTARY ACKNOWLEDGEMENTS MUST
BE ATTACHED PER CIVIL CODE,
SEC. 1180 et seq.

CORPORATE ACKNOWLEDGMENT 1683 NO. 202

State of California
County of Orange } ss.

On this the 31st day of January 19 85, before me,
Katherine A. Linn,
the undersigned Notary Public, personally appeared
Donn A. Winslow,
☒ personally known to me
☐ ~~proved to me on the basis of satisfactory evidence~~
to be the person(~~s~~) who executed the within instrument as ________ or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.

OFFICIAL SEAL
KATHERINE A LINN
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My comm. expires JUN 17, 1988

Notary's Signature

7120 122 Conditional Use Permit - 84-0469

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4625 • Woodland Hills, CA 91364

Exhibit
Page 33 of 78

1689

(R-85-975)

RESOLUTION NUMBER R-262004

ADOPTED ON NOV 20 1984

WHEREAS, PACTEL MOBILE ACCESS, INC., a Delaware corporation, "Owner/Permittee," filed an application for a Conditional Use Permit, CUP-84-0469, to construct and operate a communication facility consisting of an equipment building and antenna tower located on the south side of State Highway 94 at 30th Place more particularly described as Lot 2, Hilltop Subdivision, Map No. 5357 and Lots 15 to 18, Block 97, E. W. Morse Subdivision, Map No. 547, in the CC and R-3000 Zones of the Southeast San Diego Community Plan area; and

WHEREAS, on October 25, 1984, the Planning Commission of The City of San Diego made its findings of fact, approved Conditional Use Permit No. 84-0469 and filed said decision in the office of the City Clerk; and

WHEREAS, said Conditional Use Permit No. 84-0469, pursuant to Section 101.0507 of the San Diego Municipal Code, was set for public hearing on November 20, 1984, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego as follows:

All of the following facts exist with respect to Conditional Use Permit No. 84-0469:

1. The proposed use will not adversely affect the neighborhood, the General Plan or the community plan and will not be detrimental to the health, safety and general welfare of persons residing or working in the area.

2. The proposed use will comply with all the relevant regulations in the Municipal Code. Section 101.0507, paragraph A.7., of the San Diego Municipal Code grants this Council, following Planning Commission recommendation, authority to approve radio or television transmission stations and broadcasting studios in any zone by a Conditional Use Permit. This Council believes that appropriate conditions are included that would sufficiently reduce the negative visual impact of the proposed project.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that this Council does hereby grant to PACTEL MOBILE ACCESS, INC., a Delaware corporation, Owner/Permittee, Conditional Use Permit No. 84-0469 in the form and with the terms and conditions as set forth in the permit attached hereto and made a part hereof.

APPROVED: John W. Witt, City Attorney

By [signature]
Frederick C. Conrad
Chief Deputy City Attorney

FCC:ib:632
11/29/84
Or.Dept:Clerk
R-85-975
Form=r.helipadCUP

Passed and adopted by the Council of The City of San Diego on November 20, 1984 by the following votes:

YEAS: Mitchell, McColl, Jones, Struiksma, Gotch, Hedgecock.

NAYS: None.

NOT PRESENT: Cleator, Murphy, Martinez.

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

By BARBARA BAXTER
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 262004 passed and adopted by the Council of The City of San Diego, California, on November 20, 1984.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By Barbara Baxter
Deputy

(Rev. 5/83)
bb

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90302

EXHIBIT 2

CONDITIONAL USE PERMIT
NO. 83-0629
CITY COUNCIL

This Conditional Use Permit is granted by the City Council of The City of San Diego to PACTEL MOBILE ACCESS, a Delaware Corporation, Owner/Permittee, under the conditions in Section 101.0507 of the Municipal Code of The City of San Diego.

1. Permission is granted to Owner/Permittee to construct and operate a communication facility consisting of an equipment building and antenna tower located on the north side of Mt. Ada Road between Mt. Rias Place and Mt. Albertine Avenue, more particularly described a Portion of Parcel B, Parcel Map 227, in the CA Zone.

2. The facility shall consist of the following:

a. A 26-foot by 22-foot equipment building and a 145-foot-high antenna tower for frequency reception and transmission. The color of the pole shall be cool medium-light grey;

b. Off-street parking for service personnel; and

c. Accessory uses as may be determined incidental and approved by the Planning Director.

3. Not less than two off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. Parking spaces shall be consistent with Division 8 of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Planning Department standards. Parking areas shall be marked.

4. No permit for construction of the expanded facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

a. The Permittee signs and returns the amended permit to the Planning Department; and

b. The Conditional Use Permit is recorded in the office of the County Recorder.

5. Before issuance of any building permits, complete building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications for amendment of this permit shall have been granted.

6. Before issuance of any building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Planning Director for approval. The plans shall be in substantial conformity to Exhibit "A," dated October 25, 1984, on file in the office of the Planning Department. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended. Specific plant species shall be identified on final landscaping plans and shall be subject to Planning Director approval.

7. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located and not reflect onto adjacent properties.

8. This Conditional Use Permit must be used within 36 months after the date of City approval or the permit shall be void. An Extension of Time may be granted as set forth in Section 101.0506 and 101.0507 of the Municipal Code. Such extension of time shall be subject to all regulations in force at the time of the extension.

9. After establishment of the amended project, the property shall not be used for any other purposes unless:

a. Authorized by the City Council; or

b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or

c. The permit has been revoked by the City.

10 This Conditional Use Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.

11 This Conditional Use Permit is a covenant running with the lands and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

12. This permit shall expire 20 years from the date of approval. If an extension is requested, the operation and conditions shall be reviewed at public hearings by the Planning Commission and City Council.

13. In the event that additional cellular mobile phone communication systems are needed in the future that would require a transmitting tower or towers in the vicinity of this approved facility, the permittee shall allow the installation of antennas on the tower authorized by this permit and the installation of necessary support equipment on the premises if the applicant for such additional antennae and support equipment shows that the operation thereof would not interfere with the operation of the permittee's antennae and support equipment and the co-location of such antennae and support equipment are otherwise technically feasible and compatible, and such additional antennae and support equipment are approved by The City of San Diego following a noticed public hearing on the matter.

ADOPTED BY THE COUNCIL OF THE CITY OF SAN DIEGO THIS 20TH DAY OF NOVEMBER, 1984.

AUTHENTICATED BY:

Roger Hedgecock
Mayor of The City of San Diego

City Clerk of The City of San Diego

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On this 13th day of February, 1985, before me, the undersigned, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ROGER HEDGECOCK, known to me to be the Mayor, and CHARLES G. ABDELNOUR, known to me to be the City Clerk of The City of San Diego, the municipal corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the County of San Diego, State of California, the day and year in this certificate first above written.

OFFICIAL SEAL
RUTH E. KLAUER
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires May 23, 1985

Notary Public in and for the County of San Diego, State of California

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Conditional Use Permit and promises to perform each and every obligation of Permittee hereunder.

PACTEL MOBIL ACCESS, INC.
a Delaware corporation

By ____________________

NOTE: NOTARY ACKNOWLEDGEMENTS MUST BE ATTACHED PER CIVIL CODE, SEC. 1180 et seq.

AUTHENTICATED BY:

Roger Hedgecock
Mayor of The City of San Diego

City Clerk of The City of San Diego

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On this 13th day of February, 1985, before me, the undersigned, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ROGER HEDGECOCK, known to me to be the Mayor, and CHARLES G. ABDELNOUR, known to me to be the City Clerk of The City of San Diego, the municipal corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the municipal corporation therein named, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the County of San Diego, State of California, the day and year in this certificate first above written.

OFFICIAL SEAL
RUTH E. KLAUER
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires May 23, 1985

Notary Public in and for the County of San Diego, State of California

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Conditional Use Permit and promises to perform each and every obligation of Permittee hereunder.

PACTEL MOBIL ACCESS, INC.
a Delaware corporation

CORPORATE ACKNOWLEDGMENT

NO. 202

State of California
County of Orange } SS.

On this the 31st day of January 19 85, before me,
Katherine A. Linn,
the undersigned Notary Public, personally appeared
Donn A. Winslow,

☒ personally known to me
☐ ~~proved to me on the basis of satisfactory evidence~~
to be the person(~~s~~) who executed the within instrument ~~as~~
________ ~~or~~ on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.

OFFICIAL SEAL
KATHERINE A LINN
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My comm. expires JUN 17, 1988

Notary's Signature

Exhibit
Page 42 of 92

(R-85-974)

RESOLUTION NUMBER R- 262003

ADOPTED ON NOV 20 1984

WHEREAS, PACTEL MOBILE ACCESS, INC., a Delaware corporation, "Owner/Permittee," filed an application for a Conditional Use Permit, CUP-83-0629, to construct and operate a communication facility consisting of an equipment building and antenna tower located on the north side of Mt. Ada Road, between Mt. Rias Place and Mt. Albertine Avenue, more particularly described as a portion of Parcel B, Parcel Map No. 227, in the CA Zone of the Clairemont Mesa Community Plan area; and

WHEREAS, on October 25, 1984, the Planning Commission of The City of San Diego made its findings of fact, approved Conditional Use Permit No. 83-0629 and filed said decision in the office of the City Clerk; and

WHEREAS, said Conditional Use Permit No. 83-0629, pursuant to Section 101.0507 of the San Diego Municipal Code, was set for public hearing on November 20, 1984, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego as follows:

All of the following facts exist with respect to Conditional Use Permit No. 83-0696:

1. The proposed use will not adversely affect the neighborhood, the General Plan or the community plan and will not be detrimental to the health, safety and general welfare of persons residing or working in the area.

2. The proposed use will comply with all the relevant regulations in the Municipal Code. Section 101.0507, paragraph A.7., of the San Diego Municipal Code grants this Council, following Planning Commission recommendation, authority to approve radio or television transmission stations and broadcasting studios in any zone by a Conditional Use Permit. This Council believes that appropriate conditions are included that would sufficiently reduce the negative visual impact of the proposed project.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that this Council does hereby grant to PACTEL MOBILE ACCESS, INC., a Delaware corporation, Owner/Permittee, Conditional Use Permit No. 83-0629 in the form and with the terms and conditions as set forth in the permit attached hereto and made a part hereof.

APPROVED: John W. Witt, City Attorney

By Frederick C. Conrad
Frederick C. Conrad
Chief Deputy City Attorney

FCC:ib:632
11/29/84
Or.Dept:Clerk
R-85-974
Form=r.helipadCUP

Passed and adopted by the Council of The City of San Diego on November 20, 1984 by the following votes:

YEAS: Mitchell, McColl, Jones, Struiksma, Gotch, Hedgecock.

NAYS: None.

NOT PRESENT: Cleator, Murphy, Martinez.

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

By BARBARA BAXTER
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 262003 passed and adopted by the Council of The City of San Diego, California, on November 20, 1984.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By Barbara Baxter
Deputy

(Rev. 5/83)
bb

Exhibit 4
Page 41 of 14

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT 3

42-5781

City of San Diego
Development Services
1222 First Ave., MS-301
San Diego, CA 92101-4154
(619) 446-5000
www.sandiego.gov/development-services

THE CITY OF SAN DIEGO

General Application

Part I (Complete for all permit/approvals)

1. Approval Type: *Check appropriate box for type of approval needed. Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* • ☐ Electrical • ☐ Plumbing/Mechanical • ☐ Sign
• Construction Permits: ☐ Structure ☐ Grading ☐ Public Right-of-Way; • ☐ Subdivision • ☐ Demolition/Removal
• Development Permits: ☐ Neighborhood Use ☐ Coastal ☐ Neighborhood Development ☐ Site Development ☒ Planned Development
☒ Conditional Use ☐ Variance • ☐ Vesting Tentative Map • ☐ Tentative Map • ☐ Map Waiver • ☐ Other

2. Project Address: *Include Building or Suite No.* ~~700 30th Place~~ 797 1/3 30TH PL
Project Title: American Tower CA-0037
Project No. For City Use Only: 92067

Legal Description: *(Lot, Block, Subdivision Name & Map Number OR Parcel and Parcel Map Number)* Lot 2, Hilltop Subdivision, Map 5357
Assessor's Parcel No.: 545-031-033, 031

Existing Use: Telecommunications Facility
Proposed Use: Telecommunications Facility
Total Floor Area: Approx. 8,000 sq. ft.

Project Description:
~~Please see attached Site Justification Letter~~

3. Engineer/Architect/Designer Name: Basillio Associates ✓ 6-8-07
Fax Number: 949-727-4210
Address: 12 J Mauchly, suite 100 **City:** Irvine **State:** CA **Zip Code:** 92618 **Telephone:** 949-727-4200

4. Property Owner/Lessee Tenant Name *Please check one* ☒ Owner ☐ Lessee or Tenant
Verizon Wireless ✓ 6-8-07
Fax Number: 949-286-8010
Address: 15505 Sand Canyon Ave **City:** Irvine **State:** CA **Zip Code:** 92618-3114 **Telephone:** 949-286-8623

Part II (Complete for building, plumbing, electrical, mechanical or sign permits)

5. Contractor Name *(not required for development permits)*
Not Applicable, new construction is not proposed
Fax Number
Address **City** **State** **Zip Code** **Telephone**

State License No. **License Class** **City Business Tax No.**

Licensed Contractor's Declaration: I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

Signature Title Date

6. Workers' Compensation Declaration: I hereby affirm under penalty of perjury one of the following declarations:

☐ a. I have and will maintain a certificate of consent to self-insure for workers' compensation as provided by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

☐ b. I have and will maintain workers' compensation, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:
Insurance Company ______ Policy No. ______ Expiration Date ______
(This section need not be completed if the permit is for one hundred dollars ($100) or less).

☐ c. I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions

Signature ______ Date ______

Warning: Failure to secure workers' compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines up to one hundred thousand dollars ($100,000), in addition to the cost of compensation, damages as provided for in Section 3706 of the Labor Code, interest, and attorney's fees.

7. Owner-Builder Declaration: I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he is licensed pursuant to the provisions of the Contractor's License Law (Chapter 9, commencing with Section 7000, of Division 3 of the Business and Professions Code) or that he is exempt therefrom, and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500)]:

☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he did not build or improve for the purpose of sale.).

☐ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and contracts for such projects with contractor(s) licensed pursuant to the Contractor's License Law).

☐ I am exempt under Section ______ B.&P.C. for this reason:

Signature ______ Date ______

8. Construction Lending Agency: I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C). If the name of the lending agency is not known, the word "unknown" should be written here.

Lender's Name: ______ Lender's Address: ______

CONTINUED ON REVERSE SIDE

Project Address: Include Building or Suite No.
700 30th Place

Project No. For City Use Only

Part III (Complete as required)

9. Financially Responsible Party (complete for projects requiring a deposit account)

Name/Firm Name			Address	
American Tower			2201 Dupont Drive, Suite 340	
City	State	Zip Code	Telephone	Fax No.
Irvine	CA	92612	949-442-6400	949-474-7260

Financially Responsible Party Declaration: I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.

Print Name: Terri Beck Title: Area Vice President

Signature* [signature] Date: 12/16/05

*The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer)

10. Public Notice Certification: *(To be completed when a public notice package is required.)*
I hereby certify that the names and addresses submitted with the Public Notice package are current and accurate for the project site and for all of the properties located within 300 feet of the exterior boundaries of the property described in this application, and that the Assessor's Parcel Number and ownership information were obtained from the latest adopted San Diego County Tax Roll, and any update thereto, maintained in the office of the San Diego County Tax Assessor on ________________ 20___. I understand that if it is found that any of this information is incorrect, the applicant will have to file a new and corrected list of impacted property owners and occupants with the City and any public hearing conducted for the project application may be declared null and void by the decision-making body or by the courts and the application may have to be refiled and the processing fee/deposit paid again.

Signature [signature] Title [signature] Date 12/6/05

Part IV (Complete for all permits/approvals)

11. Applicant Information: ☐ Property Owner ☑ Authorized Agent for Property Owner ☐ Other Entitled Person

Name:				Fax Number
Douglas Kearney, or James Kelly for American Tower				
Address	City	State	Zip Code	Telephone
2201 Dupont Drive, Suite 340	Irvine	CA	92612	949-442-6400

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations.

Signature [signature] Date 12/15/05

Important Instructions to Applicant

California State law requires every permit applicant to provide specific information and certain declarations regarding the proposed work. ***The following instructions describe who may sign the required declarations.***

Licensed Contractor
This statement may be signed by the contractor or a corporate officer of a construction company including President, Vice President, Secretary, Treasurer, Trustee, Chairman of the Board or Responsible Managing Employee (RME). An agent for the contractor may sign only when a letter of authorization from the contractor authorizing the agent to sign is presented at permit issuance. The person signing must list his/her title.

Workers' Compensation Declaration
This statement may be signed by the contractor, owner, tenant, lessee or an authorized agent of one of these. A valid Certificate of Workers' Compensation Insurance must be presented at permit issuance. The certificate:

a. Must show the name of the insured.

b. Must list the policy number, effective date, and expiration date of the insurance policy.

If item 6.c. is checked, only the contractor or owner may sign this area, NOT AN AGENT. This section is signed only when the owner or contractor will have no employees on the job. If, after signing the exemption from the Workers' Compensation provisions of the Labor Code, the contractor or owner-builder should become subject to such provisions, they must forthwith comply. In the event they do not comply with the Workers' Compensation Law, the permit shall be deemed revoked.

Owner-Builder Declaration
This statement may be signed by the owner, lessee, tenant, architect, engineer, licensed pest control operator, or an authorized agent of any of these. In every case, a separate Owner-Builder Verification form (DS-3042) must also be signed by the owner.

Site Justification Letter

Location:	700 30th Place
Zone:	CT-2
APN:	545-031-33
American Tower/SpectraSite Number	300618/CA-0037
Conditional Use Permit #	CUP No. 84-0469
Permit Expiration Date	Nov. 20, 2004
Contacts	Robert Jystad, Esq. Tel: 310-209-8515; Fax 310-984-5132 rjystad@sbcglobal.net James Kelly Tel: 949-442-6407; Fax: (949) 474-7260 James.Kelly@americantower.com Doug Kearney Tel: 949-442-6407; Fax: (949) 474-7260 Doug.Kearney@americantower.com

American Tower Corporation requests that the City of San Diego either extend the original Conditional Use Permit, or in the alternative, approve a new Conditional Use Permit and Planned Development Permit, consistent with the original Conditions of Approval under Conditional Use Permit Number 84-0469 (as amended) (*please refer to attached, original CUP*) to continue to operate, and maintain a wireless communication facility at 700 30th Place. The existing communications facility consists of a 130 foot monopole with seven (7) microwave antennas, one (1) 8-foot omni-directional cellular antenna, and eighteen (18) four-foot directional cellular antennas. A 484-square foot communications equipment building is located adjacent to the monopole support structure. Both structures are surrounded by a six-foot-high chain link security fence. American Tower is requesting the extension and/or the Planned Development Permit in order that Lessee, Verizon Wireless can continue to provide uninterrupted and seamless wireless service to their customers.

Planning/Zoning Consistency

As an initial matter, it would be reasonable and appropriate for the City to treat this application as a request for an extension of the existing CUP. The original 20-year CUP was issued on November 20, 1984 and the facility has continued to exist without controversy since it was first approved. American Tower and SpectraSite merged this past year and challenges associated with the consolidation of these two large companies resulted in a backlog of tasks including the renewal of this CUP. On its own initiative, American Tower met with the City to discuss the renewal of this and other

American Tower Corporation
2201 Dupont Drive, Suite 340
Irvine, CA 92612

CUPs in July 2005. American Tower has met with and has maintained contact with the City throughout the past few months and has expedited its own internal processes in order to file this application in a timely manner consistent with the requests of City staff.

If the City is willing to treat this request as a request for an extension, then, according to San Diego Mun. Code § 126.0111, CUP No. 94-0627 could be extended up to three years on the basis of the following findings:

> *(1) This project as originally approved would not place the occupants of the proposed development or the immediate community in a condition dangerous to their health or safety.*

The facility poses no danger to the occupants of the property or to the community. Arguably, its removal poses a threat both to the area residents and to the traffic on Highway 94 by creating a gap in the provision of wireless communication services in an area where traffic related emergencies are routine. The site meets all applicable Building and Electrical Code requirements and complies with all state and federal regulations, including the FCC's maximum permitted exposure (MPE) requirements.

> *(2) No new condition is required to comply with state or federal law.*

American Tower is not aware of any changes to state or federal law that would require the City to impose additional conditions on the facility.

Other than the fact that the CUP expired before being renewed, neither SpectraSite nor American Tower, nor the Lessee Verizon Wireless, violated any conditions of the CUP.

In the event that the City requires American Tower to obtain a new Conditional Use Permit and Planned Development Permit for this facility, that permit could be issued on the basis of the findings identified in San Diego Mun. Code §§ 126.0604 (Planned Development Permit). In providing the following information, American Tower notes that existing law governing the zoning of wireless telecommunications facilities does not permit the City to exercise unfettered discretion in its determination that a particular facility meets the City's existing zoning requirements. *Sprint Telephony PCS, LP v. County of San Diego*, 377 F.Supp.2d 886 (S.D. Cal. 2005) *motion for recon. denied* (enjoining enforcement of the County wireless telecommunications ordinance and applicable zoning code requirements on wireless telecommunications facilities on the basis of federal preemption). Accordingly, American Tower offers the following information to facilitate the City's review of this application, but in doing so reserves all rights and does not waive any right to any claim or defense, including federal preemption.

Findings Required for a Planned Development Permit

American Tower is requesting the City to permit the continued use of a communications facility that has been operational for over ten years and continuously serving the City of San Diego's vital public and private communications needs. Wireless networks are unusual in that there are significant height and location requirements that must be met to ensure their proper and effective use.

American Tower Corporation
2201 Dupont Drive, Suite 340
Irvine, CA 92612

Exhibit
Page 10 of 84

The City can permit this communications facility at its present height and location with a Planned Development Permit, subject to the following findings:

(1) The proposed development will not adversely affect the applicable land use plan.

The facility has existed on this site for twenty years without controversy. The location, size, design, and operating characteristics of the existing communications facility does not create noise, traffic, or other conditions that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

- The facility is located in an CT-2 (commercial) zone on a small hill overlooking Highway 94.
- The equipment associated with the facility operates virtually noise-free.
- The equipment does not emit fumes, smoke, dust, or odors that could be considered objectionable.
- The communications facility is unmanned and requires only periodic maintenance.

(2) The proposed development will not be detrimental to the public health safety and welfare.

The existing communications facility has not created conditions or circumstances contrary to the public health, safety, and the general welfare, in that:

- The existing pole provides opportunity for co-location, reducing the need for other wireless facilities in the area.
- Wireless communications service a critical need in the event of public emergency, including traffic accidents and other freeway incidents.
- Advanced wireless technologies are a use now required local businesses, homes, and schools.
- Digital wireless systems are an economical alternative to wired networks.
- All American Tower facilities operate in full compliance with the regulations and licensing requirements of the FCC, FAA, and CPUC.

(3) The proposed development will comply with the applicable regulations of the Land Development Code.

The communications facility complies with the applicable regulations of the Land Development Code. It was permitted with a Conditional Use Permit in its current location and at its current height. American Tower is proposing no modifications to the communications facility that would alter this finding.

(4) The proposed development, when considered as a whole, will be beneficial to the community.

The proposed facility will benefit the community because it will continue to allow commuters, businesses, and residents within the coverage area wireless access to the

American Tower Corporation
2201 Dupont Drive, Suite 340
Irvine, CA 92612

rapidly expanding communication infrastructure and to voice and data transmission services not currently available.

> (5) *Any proposed deviations pursuant to § 126.0602(b)(2) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.*

The communications facility is appropriately placed it is adjacent to a major commuter thoroughfares and is located in an area zoned for commercial uses. The monopole and antennas are painted light gray and the equipment buildings are desert tan to blend with the surrounding area. The monopole is partially screened from view by existing mature landscaping.

Moreover, reduction in the height of the antennas on this structure to the zone's 30-foot limitation will seriously impact the quality and scope of coverage provide by Verizon Wireless from this site. The project therefore is more desirable in its present configuration than it would be if the City strictly enforced the development regulations for this zone.

Brief Overview of American Tower Corporation

American Tower Corporation (www.americantower.com) is the leading independent owner, operator and developer of broadcast and wireless communications sites in North America. American Tower owns and operates over 22,000 sites in the United States, Mexico, and Brazil. Additionally, American Tower manages approximately 2,000 revenue producing rooftop and tower sites. American Towers customers are leading wireless communications providers, including Cingular, Sprint Nextel and Verizon Wireless, radio and television broadcasters, and federal, state and local government agencies.

American Tower Corporation
2201 Dupont Drive, Suite 340
Irvine, CA 92612

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90302

EXHIBIT 4

DETERMINATION OF

ENVIRONMENTAL EXEMPTION

Pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO **Project No.: 92067** **Date: February 8, 2006**

Action/Permit(s): CUP/SDP/PDP

Description of Activity: **Verizon 30th Place** **Approval of the proposed project would allow the operation of an existing, expired CUP (84-0469) consisting of a 130 foot high monopole supporting a total of 26 antennas with a 484 square-foot equipment building.**

Location of Activity: The project is located at 700 30th Place within the Southeastern San Diego Community Plan, in the City and County of San Diego.

(CHECK BOXES BELOW)

1. [ ] This activity is **EXEMPT FROM CEQA** pursuant to:

   [ ] Section 15061(b) (3) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).

2. [X] This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

ARTICLE 19 of GUIDELINES
CATEGORICAL EXEMPTIONS
(Incomplete list)

Section	Short Name
[x] 15301	Existing Facilities
[ ] 15302	Replacement or Reconstruction
[ ] 15303	New Construction or Conversion of Small Structures
[ ] 15304	Minor Alterations to Land
[ ] 15305	Minor Alteration in Land Use
[ ] 15306	Information Collection
[ ] 15311	Accessory Structures
[ ] 15312	Surplus Government Property Sales
[ ] 15315	Minor Land Divisions
[ ] 15317	Open Space Contracts or Easements
[ ] 15319	Annexation of Existing Facilities and Lots for Exempt Facilities
[ ] 15325	Transfer of Ownership of Interest in Land to Preserve Open Space
[ ] Other	______

ARTICLE 18 of GUIDELINES
STATUTORY EXEMPTIONS
(Incomplete list)

Section	Short Name
[ ] 15261	Ongoing Project
[ ] 15262	Feasibility and Planning Studies
[ ] 15265	Adoption of Coastal Plans and Programs
[ ] 15268	Ministerial Projects
[ ] 15269	Emergency Projects
[ ] Other	

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

[signature] (FOR)
Myra Herrmann, Senior Planner
Environmental Analysis Section

Distribution:

Exemption or Project File
Karen Lynch-Ashcraft, Development Services Department

Exhibit
Page 14 of 19

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT 5

42-5718

City of San Diego
Development Services
1222 First Ave., MS-301
San Diego, CA 92101-4154
(619) 446-5000
THE CITY OF SAN DIEGO www.sandiego.gov/development-services

425718

General Application

Part I *(Complete for all permits/approvals)*

1. Approval Type: *Check appropriate box for type of approval needed. Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ **Electrical** • ☐ **Plumbing/Mechanical** • ☐ **Sign**
• **Construction Permits:** ☐ Structure ☐ Grading ☐ Public Right-of-Way; • ☐ **Subdivision** • ☐ **Demolition/Removal**
• **Development Permits:** ☐ Neighborhood Use ☐ Coastal ☐ Neighborhood Development ☐ Site Development ☒ Planned Development
☒ Conditional Use ☐ Variance • ☐ **Vesting Tentative Map** • ☐ **Tentative Map** • ☐ **Map Waiver** • ☐ **Other** ______

2. Project Address: *Include Building or Suite No.* 6426 Mt. Ada Rd
Project Title: American Tower
Project No. *For City Use Only* 91178

Legal Description: *(Lot, Block, Subdivision Name & Map Number OR Parcel and Parcel Map Number)* Portion of Parcel B, Parcel Map 227
Assessor's Parcel No. 419-120-?-00

Existing Use: Wireless Telecommunications Tower
Proposed Use: Wireless Telecommunications Tower
Total Floor Area: Approx. 800 sq. ft.

Project Description: Please See Attached

3. Engineer/Architect/Designer Name Basillio Associates, Inc.
Fax Number 949-727-4210
Address: 12 J Mauchly, Suite 100 | City: IrvinE | State: CA | Zip Code: 92618 | Telephone: 949-727-4200

4. Property Owner/Lessee Tenant Name *Please check one* ☒ Owner ☐ Lessee or Tenant | **Fax Number**
Buckel Trust
Address: 10313 Boulder Creek Rd | City: Descano | State: CA | Zip Code: 91916 | Telephone: 619-445-2238

Part II *(Complete for building, plumbing, electrical, mechanical or sign permits)*

5. Contractor Name *(not required for development permits)* Not applicable, renewing exisitng permit | **Fax Number**
Address | City | State | Zip Code | Telephone
State License No. | License Class | City Business Tax No.

Licensed Contractor's Declaration: I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

Signature ______ Title ______ Date ______

6. Workers' Compensation Declaration: I hereby affirm under penalty of perjury one of the following declarations:
☐ a. I have and will maintain a certificate of consent to self-insure for workers' compensation as provided by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.
☐ b. I have and will maintain workers' compensation, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:
Insurance Company ______ Policy No. ______ Expiration Date ______
(This section need not be completed if the permit is for one hundred dollars ($100) or less).
☐ c. I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions
Signature ______ Date ______
Warning: Failure to secure workers' compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines up to one hundred thousand dollars ($100,000), in addition to the cost of compensation, damages as provided for in Section 3706 of the Labor Code, interest, and attorney's fees.

7. Owner-Builder Declaration: I hereby affirm that I am exempt from the Contractor's License Law for the following reason [Sec. 7031.5, Business and Professions Code: Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he is licensed pursuant to the provisions of the Contractor's License Law (Chapter 9, commencing with Section 7000, of Division 3 of the Business and Professions Code) or that he is exempt therefrom, and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500)]:
☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he did not build or improve for the purpose of sale.).
☐ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and contracts for such projects with contractor(s) licensed pursuant to the Contractor's License Law).
☐ I am exempt under Section ______ B.&P.C. for this reason:
Signature ______ Date ______

8. Construction Lending Agency: I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C). If the name of the lending agency is not known, the word "unknown" should be written here.

Lender's Name: ______ Lender's Address: ______

CONTINUED ON REVERSE SIDE

No grant deed CC-1-3

Exhibit 5
Page 56 of 79

000756

Project Address: *Include Building or Suite No.*
6426 Mt. Ada Rd

Project No. *For City Use Only*

Part III *(Complete as required)*

9. Financially Responsible Party (complete for projects requiring a deposit account)

Name/Firm Name			Address	
American Tower			2201 Dupont drive, Suite 340	
City	**State**	**Zip Code**	**Telephone**	**Fax No.**
Irvine	CA	92612	949-442-6400	949-474-7260

Financially Responsible Party Declaration: I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.

Print Name: Terri Beck Title: Area Vice President

Signature* [signature] Date: 12/5/05

*The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer)

10. Public Notice Certification: *(To be completed when a public notice package is required.)*
I hereby certify that the names and addresses submitted with the Public Notice package are current and accurate for the project site and for all of the properties located within 300 feet of the exterior boundaries of the property described in this application, and that the Assessor's Parcel Number and ownership information were obtained from the latest adopted San Diego County Tax Roll, and any update thereto, maintained in the office of the San Diego County Tax Assessor on ________________ 20____. I understand that if it is found that any of this information is incorrect, the applicant will have to file a new and corrected list of impacted property owners and occupants with the City and any public hearing conducted for the project application may be declared null and void by the decision-making body or by the courts and the application may have to be refiled and the processing fee/deposit paid again.

Signature [signature] Title Planner Date 12/5/05

Part IV *(Complete for all permits/approvals)*

11. Applicant Information: ☐ Property Owner ☒ Authorized Agent for Property Owner ☐ Other Entitled Person

Name:				Fax Number
Doug Kearney/Jim Kelly American Tower				
Address	**City**	**State**	**Zip Code**	**Telephone**
2201 Dupont Drive, Suite 340	Irvine	CA	92612	949-442-6400

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations.

Signature [signature] Date 12/5/05

Important Instructions to Applicant

California State law requires every permit applicant to provide specific information and certain declarations regarding the proposed work. ***The following instructions describe who may sign the required declarations.***

Licensed Contractor
This statement may be signed by the contractor or a corporate officer of a construction company including President, Vice President, Secretary, Treasurer, Trustee, Chairman of the Board or Responsible Managing Employee (RME). An agent for the contractor may sign only when a letter of authorization from the contractor authorizing the agent to sign is presented at permit issuance. The person signing must list his/her title.

Workers' Compensation Declaration
This statement may be signed by the contractor, owner, tenant, lessee or an authorized agent of one of these. A valid Certificate of Workers' Compensation Insurance must be presented at permit issuance. The certificate:

a. Must show the name of the insured.

b. Must list the policy number, effective date, and expiration date of the insurance policy.

If item 6.c. is checked, only the contractor or owner may sign this area, **NOT AN AGENT**. This section is signed only when the owner or contractor will have no employees on the job. If, after signing the exemption from the Workers' Compensation provisions of the Labor Code, the contractor or owner-builder should become subject to such provisions, they must forthwith comply. In the event they do not comply with the Workers' Compensation Law, the permit shall be deemed revoked.

Owner-Builder Declaration
This statement may be signed by the owner, lessee, tenant, architect, engineer, licensed pest control operator, or an authorized agent of any of these. In every case, a separate Owner-Builder Verification form (DS-3042) must also be signed by the owner.

Exhibit 4
Page 57 of 89

Site Justification Letter

Location:	6426 Mt. Ada Road
Zone:	CC-1-3
APN:	419-120-67-00
American Tower/SpectraSite Number	300647/CA-0066
Conditional Use Permit #	CUP No. 83-0629
Permit Expiration Date	11/20/04
Contacts	Robert Jystad, Esq. Tel: 310-209-8515; Fax 310-984-5132 rjystad@sbcglobal.net James Kelly Tel: 949-442-6407; Fax: (949) 474-7260 James.Kelly@americantower.com Doug Kearney Tel: 949-442-6407; Fax: (949) 474-7260 Doug.Kearney@americantower.com

American Tower Corporation requests that the City of San Diego either extend the original Conditional Use Permit, or in the alternative, approve a new Planned Development Permit, consistent with the original Conditions of Approval under Conditional Use Permit Number 83-0629 *(please refer to attached, original CUP)* to continue to operate, and maintain a wireless communication facility at 6426 Mt. Ada Road. The existing communications facility consists of a 26' x 22' equipment building and a 136-foot-high antenna tower with 27 panel antennas and three microwave dish antennas for radio frequency reception and transmission. American Tower is requesting the extension and the Planned Development Permit in order that Lessee, Verizon Wireless, can continue to provide uninterrupted and seamless wireless service to its customers.

Planning/Zoning Consistency

As an initial matter, it would be reasonable and appropriate for the City to treat this application as a request for an extension of the existing CUP. The original 20-year CUP was issued on November 20, 1984 and the facility has continued to exist without controversy since it was first approved. American Tower and SpectraSite merged this past year and challenges associated with the consolidation of these two large companies resulted in a backlog of tasks including the renewal of this CUP. On its own initiative, American Tower met with the City to discuss the renewal of this and other CUPs in July 2005. American Tower has met with and has maintained contact with the

American Tower Corporation
2201 Dupont Drive, Suite 340
Irvine, CA 92612

Exhibit J
Page 11 of 14

City throughout the past few months and has expedited its own internal processes in order to file this application in a timely manner consistent with the requests of City staff.

If the City is willing to treat this request as a request for an extension, then, according to San Diego Mun. Code § 126.0111, CUP No. 94-0548 could be extended up to three years on the basis of the following findings:

> (1) *This project as originally approved would not place the occupants of the proposed development or the immediate community in a condition dangerous to their health or safety.*

The facility poses no danger to the occupants of the property or to the community. The site meets all applicable Building and Electrical Code requirements and complies with all state and federal regulations, including the FCC's maximum permitted exposure (MPE) requirements.

> (2) *No new condition is required to comply with state or federal law.*

American Tower is not aware of any changes to state or federal law that would require the City to impose additional conditions on the facility.

Other than the fact that the CUP expired before being renewed, neither SpectraSIte nor American Tower, nor the Lessee Verizon Wireless violated any conditions of the CUP.

In the event that the City requires American Tower to obtain a new Planned Development Permit for this facility, that permit could be issued on the basis of the findings identified in San Diego Mun. Code §§ 126.0604 (Planned Development Permit). In providing the following information, American Tower notes that existing law governing the zoning of wireless telecommunications facilities does not permit the City to exercise unfettered discretion in its determination that a particular facility meets the City's existing zoning requirements. *Sprint Telephony PCS, LP v. County of San Diego*, 377 F.Supp.2d 886 (S.D. Cal. 2005) *motion for recon. denied* (enjoining enforcement of the County wireless telecommunications ordinance and applicable zoning code requirements on wireless telecommunications facilities on the basis of federal preemption). Accordingly, American Tower offers the following information to facilitate the City's review of this application, but in doing so reserves all rights and does not waive any right to any claim or defense, including federal preemption.

Findings Required for a Planned Development Permit

American Tower is requesting the City to permit the continued use of a communications facility that has been operational for over twenty years and continuously serving the City of San Diego's vital public and private communications needs. Wireless networks are unusual in that there are significant height and location requirements that must be met to ensure their proper and effective use.

The City can permit this communications facility at its present height and location with a Planned Development Permit, subject to the following findings:

American Tower Corporation
2201 Dupont Drive, Suite 340
Irvine, CA 92612

(1) The proposed development will not adversely affect the applicable land use plan.

The facility has existed on this site for twenty years without controversy. The location, size, design, and operating characteristics of the existing communications facility does not create noise, traffic, or other conditions that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

- The facility is located adjacent to Balboa Boulevard in a site zone for commercial use.
- The equipment associated with the facility operates virtually noise-free.
- The equipment does not emit fumes, smoke, dust, or odors that could be considered objectionable.
- The communications facility is unmanned and requires only periodic maintenance.

(2) The proposed development will not be detrimental to the public health safety and welfare.

The existing communications facility has not created conditions or circumstances contrary to the public health, safety, and the general welfare, in that:

- The existing pole provides co-location, reducing the need for other wireless facilities in the area.
- Wireless communications service a critical need in the event of public emergency, including traffic accidents and other freeway incidents.
- Advanced wireless technologies are a use now required local businesses, homes, and schools.
- Digital wireless systems are an economical alternative to wired networks.
- All American Tower facilities operate in full compliance with the regulations and licensing requirements of the FCC, FAA, and CPUC.

(3) The proposed development will comply with the applicable regulations of the Land Development Code.

The communications facility complies with the applicable regulations of the Land Development Code. It was permitted with a Conditional Use Permit in its current location and at its current height. American Tower is proposing no modifications to the communications facility that would alter this finding.

(4) The proposed development, when considered as a whole, will be beneficial to the community.

The proposed facility will benefit the community because it will continue to allow commuters, businesses, and residents within the coverage area wireless access to the rapidly expanding communication infrastructure and to voice and data transmission services not currently available.

(5) *Any proposed deviations pursuant to § 126.0602(b)(2) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.*

The communications facility is appropriately placed. It is adjacent to a major transportation corridor in the rear ofd a commercial outlet. The monopole and antennas are painted sky blue and the equipment buildings shrouded in vegetation and blend with the surrounding area. The monopole is partially screened from view by existing mature landscaping.

Moreover, reduction in the height of the antennas on this structure to the zone's height limitation will seriously impact the quality and scope of coverage provide by Sprint Nextel from this site. The project therefore is more desirable in its present configuration than it would be if the City strictly enforced the development regulations for this zone.

Brief Overview of American Tower Corporation

American Tower Corporation (www.americantower.com) is the leading independent owner, operator and developer of broadcast and wireless communications sites in North America. American Tower owns and operates over 22,000 sites in the United States, Mexico, and Brazil. Additionally, American Tower manages approximately 2,000 revenue producing rooftop and tower sites. American Tower's customers are leading wireless communications providers, including Cingular, Sprint Nextel and Verizon Wireless, radio and television broadcasters, and federal, state and local government agencies.

American Tower Corporation
2201 Dupont Drive, Suite 340
Irvine, CA 92612

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90302

EXHIBIT 6

DETERMINAT.ON OF: ENVIRONMENTAL EXEMPTION

Pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO DATE: January 23, 2006

Action/Permit(s): Site Development Permit / Conditional Use Permit Permit No. 91178

Description of Activity: Verizon Mount Ada. Site Development Permit and Conditional Use Permit for a telecommunication facility consisting of an existing 136-foot tall monopole supporting 30 antennas and adjacent equipment shelter previously approved by CUP 83-0629 in the CC-1-3 zone of the Clairemont Mesa Plan area.

Location of Activity: 6426 Mount Ada Road in the Clairemont Mesa Community Planning area.

1. [ ] This activity is EXEMPT FROM CEQA pursuant to:

[ ] Section 15061(b)(1) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).

[ ] Section 15061(b)(3) of the State CEQA Guidelines ("General Rule").

2. [x] This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

ARTICLE 19 of GUIDELINES
CATEGORICAL EXEMPTIONS
(Incomplete list)

	Sec.		Short Name
[x]	15301	1	Existing Facilities
[ ]	15302	2	Replacement or Reconstruction
[ ]	15303	3	New Construction or Conversion of Small Structures
[ ]	15304	4	Minor Alterations to Land
[ ]	15305	5	Minor Alterations in Land Use Limitations
[ ]	15306	6	Information Collection
[ ]	15311	11	Accessory Structures
[ ]	15312	12	Surplus Government Property Sales
[ ]	15315	15	Minor Land Divisions
[ ]	15317	17	Open Space Contracts or Easements
[ ]	15319	19	Annexation of Existing Facilities and Lots for Exempt Facilities
[ ]	15325	25	Transfer of Ownership of Interest in Land to Preserve Open Space
[ ]	Other		______

ARTICLE 18 of GUIDELINES
STATUTORY EXEMPTIONS
(Incomplete list)

	Sec.	Short Name
[ ]	15261	Ongoing Project
[ ]	15262	Feasibility and Planning Studies
[ ]	15265	Adoption of Coastal Plans and Programs
[ ]	15268	Ministerial Projects
[ ]	15269	Emergency Projects
[ ]	Other ______	______

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Kenneth Teasley (signature)
Kenneth Teasley, Senior Planner
Environmental Analysis Section

Distribution:
Karen Lynch-Ashcraft, Dev. Project Manager
File

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000797

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT 7

Law Office of Robert Jystad

100 Oceangate, Suite 1400
Long Beach, CA 90802-4323
(310) 209-8515; (310) 216-5090 (fax)
rjystad@sbcglobal.net

By Facsimile and U.S. Mail
(619) 236-7228

March 3, 2006

Mr. James Waring, Esq.
Deputy Chief Operating Officer,
Land Use and Economic Development
Office of the Mayor
CITY OF SAN DIEGO
202 "C" Street, 11th Floor
San Diego, CA 92101

Re: **American Tower CUP Renewals**

Dear Mr. Waring:

I am writing to you on behalf of American Tower Corporation ("ATC"). ATC participated in the telecommunications meeting that you and Ms. Kris Michell held on February 2, 2006. We appreciated the time you spent with us and your attention to our concerns about the Conditional Use Permit ("CUP") permitting process.

We recognize that wireless consultant Doug Sain is working with your office on this and other issues on behalf of several major wireless carriers. Unfortunately for us, time is running short and we are compelled to contact you directly. Last summer, American Tower was forthcoming with the City's Development Services Department ("DSD") about its need to renew a number of CUPs for several monopoles it owns and manages throughout the City. As you are aware, and as we discussed on Feb. 2, the City is not permitting ATC to file for the renewal of its CUPs. Rather, because the CUPs have expired, the City is requiring ATC to file applications for new permits, which in several cases require Planned Development Permits and/or Site Development Permits in addition to the CUPs. ATC coordinated with DSD on the submission of eight new CUP applications prior to the end of 2005 and we are in receipt DSD's assessment letters on most of those applications. The conclusions drawn in these letters are extremely troubling, and, as a result, we met on Tuesday, February 21, 2006, with Senior Planner Karen Lynch Ashcraft to discuss the City's demands. Ms. Lynch Ashcraft confirmed that if American Tower is not willing to meet the requirements outlined in the assessment letters, DSD staff will recommend denial of the permits.

I have listed below some examples of DSD's demands in the assessment letters. The demands are taken from assessment letters on two sites, but they are substantially similar to language in other assessment letters. The first site, Mission San Diego, is a small shelter constructed on a hillside overlooking Qualcomm stadium and Interstate 15. There is no monopole. The antennas are affixed to small poles at the height of the shelter, about 15 feet. On February 15, 2006, ATC met with the Kearney Mesa Planning Group about this site. The Group recommended approval of the site AS IS by a vote of 10-0-1, noting that the site was hardly visible.

The second site, San Diego Border, is a 90' foot monopole located in a maintenance yard owned by the San Ysidro School District. The site overlooks Interstate 805 near the Mexican border. On February 21, 2006, ATC met with the San Ysidro Planning and Development Group, which unanimously approved the site AS IS on condition that ATC agree to paint the pole a light tan color to blend in with the adjacent hillside. One member stated: "I am certainly not going to require them to take it down."

The reasonableness of these two Community Planning Groups stands in stark contrast to the DSD assessment letters, which have drawn the following conclusions, among others:

1. [Mission San Diego]: "The location, above a busy transit corridor is *highly visible, creating a significant visual impact from all vantage points.* The Code requires that a facility be designed to minimize visual impacts by designing the facility so that it is *concealed from public view*..."

2. Mission San Diego requires a Site Development Permit unless "the project is redesigned to comply with the exemption criteria...pertaining to setbacks..." In order to meet the setback requirement, ATC will need to relocate the facility off the hillside and into the adjacent residential neighborhood.

3. [Mission San Diego]: "Understanding that the network was built around this facility, it should also be recognized that the Planning Commission imposed a 10-year restriction because it was intended that if there were a better design or technical option available at the end of the time limit, *the facility would be required to be removed.*"

4. [San Diego Border]: "The prominent location of this property does not lend itself to a 90-foot high monopole or to an institutional equipment shelter."

5. [San Diego Border]: "With the significant improvements that have been in both the design and technical disciplines, it is expected that this facility *will be replaced*..."

6. [San Diego Border]: "Since the original CUP is expired, this proposal is being reviewed against today's regulations and policies and therefore a *thorough technical analysis*...will be required."

7. [San Diego Border]: "A detailed site justification...will be required."

8. [San Diego Border]: "Understanding that the network was built around this facility, it should also be recognized that the Planning Commission imposed a 10-year restriction

because it was intended that if there were a better design or technical option available at the end of the time limit, *the pole would be required to be removed.*"

As we discussed on Feb. 2, if the City requires ATC to take these sites down, the carriers they support, including Verizon Wireless, Cingular Wireless and Sprint Nextel, will be forced to reconfigure their networks and to construct several additional sites. Moreover, if DSD is successful in having these sites removed, ATC faces a significant loss of property and will find itself effectively barred from providing services in the City. That said, we are encouraged that the City is willing to consider ATC as part of a solution to its public communications system needs at the Encanto Reservoir location. We will work with DSD and READ on a possible collocation solution on an ATC structure. We note that the City has requested a height of 110 feet for its antennas. We expect to be able to accommodate that request but there is an obvious inconsistency between that request and DSD's demand that ATC and its tenants reduce the height of antennas on its structures or face denial.

ATC cannot take this situation lightly and it is supported by several recent federal court rulings. From our perspective, DSD is taking liberty with the City's ordinances and policies on wireless telecommunications facilities in a manner that we believe is unfair and justifies the type of federal restrictions on local authority that have emerged in several pivotal telecommunications cases. For example, the City's policies and ordinances are substantially similar to San Diego County's wireless telecommunications ordinance that the Southern District permanently enjoined, though the injunction recently was stayed pending appeal. *Sprint Telephony PCS, L.P. v. County of San Diego*, 377 F. Supp. 2d 886 (S.D. Cal. 2005) (County's exercise of unfettered discretion over permits for wireless telecommunications facilities violated federal law). In *County of San Diego*, Sprint successfully argued that federal law (47 U.S.C. § 253) preempted the County's four-tiered application structure and applicable discretionary zoning requirements. Notably, the City's ordinance utilizes a similar four tiered structure.[1]

In finding that § 253 preempted the San Diego County WTO, *County of San Diego* relied heavily on *City of Auburn v. Qwest Corporation*, 260 F.3d 1160, 1175 (9th Cir. 2001) *cert. denied City of Tacoma v. Qwest Corp.*, 534 U.S. 1079 (2002) ("The preemption [of local authority] is **virtually absolute** and its purpose is clear—certain aspects of telecommunications regulation are uniquely the province of the federal government and Congress has narrowly circumscribed the role of state and local governments in this arena") (emphasis added) and *Qwest Communications Corp. v. City of Berkeley*, 146 F. Supp. 2d 1081, 1097-98 (N.D. Cal. 2001) (striking as preempted under § 253 a local ordinance that vested significant discretion to grant or deny permits "based on an open-ended set of criteria and requirements"). The Ninth Circuit recently upheld the *Berkeley* decision noting "We have interpreted this preemptive language to be clear and "virtually absolute" in restricting municipalities to a "very limited and proscribed role in the regulation of telecommunications." *Qwest Communs., Inc. v. City of Berkeley*, 2006 U.S. App. LEXIS 669 at *5-6 (9th Cir., filed Jan 6, 2006).

---

[1] We asked Ms. Lynch-Ashcraft if *County of San Diego* had any impact on DSD's process. She said it did not.

Exhibit
Page of

ATC looks forward to working with you and the City to address this problem. We are optimistic that there is a workable solution, but not without a substantial change in the DSD's approach to CUP renewals.

Please contact me at your earliest convenience to discuss this matter further. I can be reached at (310) 209-8515 or rjystad@sbcglobal.net.

Sincerely,

Robert Jystad, Esq.
Attorney for American Tower

c: Elizabeth A. Hill, Esq., American Tower Corporation

Law Office of Robert Jystad

100 Oceangate, Suite 1400
Long Beach, CA 90802-4323
(310) 209-8515; (310) 984-5132 (fax)
rjystad@sbcglobal.net

FAX COVERSHEET

To: James Waring City of San Diego	From: Robert Jystad, Esq. Attorney for American Tower Corp.
Fax: 619-236-7228	Fax: 562-216-5090
Date: March 3, 2006	Phone: 310-209-8515
No. of pages (including cover): 5	Re: American Tower CUP Renewals

If there are problems in the reception of this facsimile transmission, please contact Robert Jystad at 310-209-8515. This facsimile transmission may contain confidential or privileged information. If you believe that you have received the transmission in error, please notify the sender immediately and discard the transmission without copying or disclosing it.

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TIME : 03/03/2006 16:50
NAME : LAW_OFFICE
FAX : 15622165090
TEL : 13109845137
SER.# : 000L5J270442

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FAX NO./NAME	96192367228
DURATION	00:01:37
PAGE(S)	05
RESULT	OK
MODE	STANDARD ECM

Law Office of Robert Jystad

100 Oceangate, Suite 1400
Long Beach, CA 90802-4323
(310) 209-8515; (310) 984-5132 (fax)
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Exhibit ___
Page ___ of ___

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90302

EXHIBIT 8

CITY COUNCIL MEETING RESULTS

DATE: MONDAY, APRIL 14, 2008 **RECORDER: RICHARDSON**

This is a summary of the actions taken by the City Council.
It is NOT equivalent to the Minutes which, when approved by the City Council, constitute the official record of the meeting.

ITEM NO.	ACTIONS	R / O	303553 / 00000	Motion / Second	VOTE	VETO Y or N
150	**Introduced (O-2008-115)** Amending Chapter 2, Article 7, Division 29 of the SDMC relating to the Election Campaign Control Ordinance	I		7/6	Unanimous; all present	
151	**Adopted (R-2008-808)** Approving the Regional Transportation Congestion Improvement Program	R	303554	7/8	Unanimous; all present	N
152a	**Adopted (R-2008-757)** Authorizing the sale of excess City-owned property and broker commissions - 3440 Del Lago Boulevard, Escondido, California	R	303555	2/7	123478-yea; 56-nay	N
152b	**Adopted (R-2008-770)** Revising the minimum sale price for 5690 Genoa Drive	R	303556	2/7	123478-yea; 56-nay	N
152c	**Adopted (R-2008-771)** Authorizing the sale of excess City-owned property and broker commissions - SW corner of Laurel and State	R	303557	2/7	123478-yea; 56-nay	N
152d	**Adopted (R-2008-772)** Authorizing the sale of excess City-owned property and broker commissions - 3970-90 Sherman Street	R	303558	2/7	123478-yea; 56-nay	N
200	**Adopted (R-2008-845)** Approving the broker and commission for the slae of property located at 505 W. Maple Street	R	303559	2/7	123478-yea; 56-nay	N
201	**Adopted as Amended (R-2008-781 Rev.)** Directing the City Attorney to incorporate the 2008 Salary Setting Commission's recommendations for Mayor and City Council Members	R	303553	7/4	13478-yea; 256-nay	N
202	**Adopted (R-2008-188)** Denying Conditional Use Permit No. 292627/Site Development Permit No. 450714 - American Tower Corporation-Mt. Ada *(Note: Not subject to Mayor's veto)*	R	303560	8/4	Unanimous; 1-recused	

CITY COUNCIL MEETING RESULTS

DATE: MONDAY, APRIL 14, 2008 RECORDER: RICHARDSON

This is a summary of the actions taken by the City Council.
It is NOT equivalent to the Minutes which, when approved by the City Council, constitute the official record of the meeting.

203	**Denied Appeal (R-2008-906)** Granting/denying the appeal and granting/denying Conditional Use Permit No. 296127/Planned Development Permit No. 453612 *(Note: Not subject to Mayor's veto)*	R	303561	8/4	Unanimous; 1-recused	
S400	**Adopted with Direction (R-2008-914)** Approving and ratifying FY09 MOU between City and POA	R	303562	7/2	1234578-yea; 6-nay (4-nay on the portion initiating litigation)	N
	QUIT	Q				

'COMMENTS

Council Comment:

Non-Docket:

None.

Council President Pro Tem Madaffer adjourned the meeting at 7:22 p.m. in honor of the memory of:
Verne Goodwin at the request of Council Member Maienschein;
James Fink at the request of Council Member Faulconer;
Joseph Varley at the request of Council Member Faulconer; and
Yolanda Burruel at the request of Council Member Hueso.

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT 9

(B) Limitations on the number of on-premises fund-raising or social activities to a specific number of occurrences each year.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

§141.0405 Communication Antennas

(a) Section 141.0405 regulates the following communication antennas. Amateur (HAM) radio facilities or temporary telecommunication facilities necessitated by natural or man-made disasters are not regulated as communication antennas. Section 141.0405 does not apply to single dish antennas smaller than 24 inches in diameter or to remote panel antennas less than 24 inches in length and in width, except when associated with another telecommunication facility.

(1) Minor telecommunication facilities: Antenna facilities used in wireless telephone services, paging systems, or similar services that comply with all development regulations of the underlying zone and overlay(s) and that meet the criteria in Section 141.0405(e)(1) or (2).

(2) Major telecommunication facilities: Antenna facilities that do not meet the criteria for minor telecommunication facilities in Section 141.0405(e)(1) or (2).

(3) Satellite antennas: Antennas capable of transmitting or receiving signals to or from a transmitter or a transmitter relay located in a planetary orbit. Satellite antennas include satellite earth stations, television-reception-only satellite antennas, and satellite microwave antennas.

(b) General Rules for Telecommunication Facilities
All telecommunication facilities must comply with the following requirements:

(1) All approved telecommunication facilities must comply with the Federal standards for RF radiation in accordance with the Telecommunication Act of 1996 or any subsequent amendment to the Act pertaining to RF radiation. Documentation shall be submitted to the City providing evidence that the cumulative field measurements of radiofrequency power densities for all antennas installed on the *premises* are below the Federal standards.

Exhibit ___ Page ___ of ___

(2) Except in the event of an emergency, routine maintenance and inspection of telecommunication facilities located on residentially zoned *premises*, including all of the system components, shall occur during normal business hours between 8:00 a.m. and 5:00 p.m. Monday through Friday.

(3) Antenna facilities or associated equipment proposed for installation in the *public right-of-way* are subject to the following regulations:

(A) Antennas or associated equipment located in *public right-of-way* which is adjacent to a residentially zoned *premises* may be permitted with a Neighborhood Use Permit.

(B) Antennas and associated equipment located in the *public right-of-way* adjacent to non-residentially zoned *premises* are subject to review and approval by the City Manager.

(C) All equipment associated with antenna facilities shall be undergrounded, except for small services connection boxes or as permitted in Section 141.0405(b)(4).

(D) A construction plan must be submitted to and is subject to review and approval by the City Engineer in accordance with Chapter 6, Article 2.

(4) Antennas and associated equipment located in the *public right-of-way* may be placed above ground only if the equipment is integrated into the architecture or surrounding environment through architectural enhancement (enhancements that complement the scale, texture, color, and style), unique design solutions, enhanced landscape architecture, or complementary siting solutions to minimize visual or pedestrian impacts. These facilities may be permitted with a Conditional Use Permit decided in accordance with Process Three.

(c) Temporary facilities that provide services to public events and are limited to a one-time maximum duration of 90 calendar days are subject to the temporary use permit procedures in Chapter 12, Article 3, Division 4.

(d) All telecommunication facilities that are required to obtain encroachment authorization to locate on city-owned dedicated or designated parkland or open space areas shall comply with the following:

Exhibit 4
Page __ of __

(1) The City Manager shall determine that the proposed facility would not be detrimental to the City's property interest; would not preclude other appropriate uses; would not change or interfere with the use or purpose of the parkland or open space; and would not violate any deed restrictions related to City property, map requirements or other land use regulations.

(2) The proposed facility shall be integrated with existing park facilities or open space; shall not disturb the environmental integrity of the parkland or open space; and shall be disguised such that it does not detract from the recreational or natural character of the parkland or open space.

(3) The proposed facility shall be consistent with The City of San Diego Progress Guide and General Plan.

(e) Minor Telecommunication Facilities

Minor telecommunication facilities are permitted as a limited use or may be permitted with a Neighborhood Use Permit in the zones indicated with an "L" or an "N", respectively, in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(1) An antenna facility will be considered a minor telecommunication facility if the facility, including equipment and *structures*, is concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement (enhancements that complement the scale, texture, color, and style), unique design solutions, or *accessory use structures*.

(2) In an effort to encourage collocation and to recognize that some telecommunication facilities are minimally visible, the following shall be considered minor telecommunication facilities:

(A) Additions or modifications to telecommunication facilities that do not increase the area occupied by the antennas or the existing antenna enclosure by more than 100 percent of the originally approved facility and do not increase the area occupied by an outdoor equipment unit more than 150 feet beyond the originally approved facility, if the additions and modifications are designed to minimize visibility.

(B) Panel-shaped antennas that are flush-mounted to an existing *building facade* on at least one edge, extend a maximum of 18 inches from the *building facade* at any edge, do not exceed the height of the building, and are designed to blend with the color and texture of the existing building.

(C) Whip antennas if the number of antennas that are visible from the *public right-of-way* does not exceed six, if the antennas measure 4 inches or less in diameter, and if they have a mounting apparatus that is concealed from public view.

(3) Minor telecommunication facilities are not permitted in the following locations:

(A) On *premises* that are developed with residential uses in residential zones;

(B) On vacant *premises* zoned for residential development;

(C) On *premises* that have been designated as *historical resources*;

(D) On *premises* that have been designated or mapped as containing sensitive resources;

(E) On *premises* within the *MHPA*; or

(F) On *premises* that are leased for billboard use.

(4) The installation of a minor telecommunication facility shall not result in the elimination of required parking spaces.

(5) Minor telecommunication facilities that terminate operation shall be removed by the operator within 90 calendar days of termination.

(f) Major Telecommunication Facilities

Major telecommunication facilities may be permitted with a Conditional Use Permit decided in accordance with Process Three, except that major telecommunication facilities on dedicated or designated parkland and open space may be permitted with a Conditional Use Permit decided in accordance with Process Five, in the zones indicated with a "C" in the Use Regulations

Exhibit
Page of

Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(1) Major telecommunication facilities are not permitted in the following locations:

(A) On *premises* containing designated *historical resources*;

(B) Within viewsheds of designated and recommended State Scenic Highways and City Scenic Routes; or

(C) Within ½ mile of another major telecommunication facility, unless the proposed facility will be concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement (enhancements that complement the scale, texture, color, and style), unique design solutions, and *accessory use structures*.

(D) Within the Coastal Overlay Zone, on *premises* within the MHPA and/or containing *steep hillsides* with *sensitive biological resources*, or within pubic view corridors or view sheds identified in applicable *land use plans*.

(2) Major telecommunication facilities shall be designed to be minimally visible through the use of architecture, landscape architecture, and siting solutions.

(3) Major telecommunication facilities shall use the smallest and least visually intrusive antennas and components that meet the requirements of the facility.

(g) Satellite Antennas

Satellite antennas are permitted as a limited use subject to Section 141.0405(g)(2), and may be permitted with a Neighborhood Use Permit subject to Section 141.0405(g)(3), or with a Conditional Use Permit decided in accordance with Process Three subject to Section 141.0405(g)(4).

(1) Exemption. Satellite antennas that are 5 feet in diameter or smaller are permitted in all zones and are exempt from this section.

Exhibit
Page of

(2) Limited Use Regulations. Satellite antennas that exceed 5 feet in diameter are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(A) Satellite antennas are not permitted within the *MHPA*.

(B) Satellite antennas are not permitted on *premises* that have been designated as *historical resources*.

(C) Satellite antennas shall not exceed 10 feet in diameter.

(D) Ground-mounted satellite antennas shall not exceed 15 feet in *structure height*.

(E) Ground-mounted satellite antennas shall not be located in the *street yard*, front *yard*, or *street* side *yard* of a *premises*.

(F) Satellite antennas shall not be light-reflective.

(G) Satellite antennas shall not have any *sign copy* on them nor shall they be illuminated.

(H) Ground-, roof-, and pole-mounted satellite antennas shall be *screened* by fencing, buildings, or parapets that appear to be an integral part of the building, or by landscaping so that not more than 25 percent of the antenna height is visible from the *grade* level of adjacent *premises* and adjacent *public rights-of-way*.

(3) Neighborhood Use Permit Regulations. Proposed satellite antennas that do not comply with Section 141.0405(b)(2) may be permitted with a Neighborhood Use Permit subject to the following regulations.

(A) Satellite antennas are not permitted within the *MHPA*.

(B) Satellite antennas are not permitted on *premises* that have been designated as *historical resources*.

(C) Satellite antennas shall not exceed 10 feet in diameter.

(D) Satellite antennas shall not be light-reflective.

Exhibit A
Page __ of __

(E) Satellite antennas shall not have any *sign copy* on them nor shall they be illuminated.

(F) The visual impacts of the antenna to adjacent *premises* and adjacent *public rights-of-way* shall be minimized by the positioning of the antenna on the site and the use of landscape or other *screening*.

(4) Conditional Use Permit Regulations. Except for proposed satellite antennas which are *accessory uses* in industrial zones, proposed satellite antennas that exceed 10 feet in diameter may be permitted only with a Conditional Use Permit decided in accordance with Process Three subject to the following regulations.

(A) Satellite antennas are not permitted within the *MHPA*.

(B) Satellite antennas are not permitted on *premises* or its appurtenances that have been designated as *historical resources*.

(C) The visual impacts of the antenna to adjacent *premises* and adjacent *public rights-of-way* shall be minimized by the positioning of the antenna on the site and the use of landscaping or other *screening*.

(Amended 1-9-2001 by O-18910 N.S.; effective 8-8-2001.)

§141.0406 **Correctional Placement Centers**

Correctional placement centers may be permitted with a Conditional Use Permit decided in accordance with Process Four in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(a) Correctional placement centers are not permitted in any of the following locations:

(1) Within the beach impact area of the Parking Impact Overlay Zone;

(2) Within 1/4 mile of any type of residential care facility, *social service institution*, welfare institution, or similar type of facility, measured from *property line* to *property line* in accordance with Section 113.0225;

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT 10

Exhibit 10
Page 81 of 84

THE CITY OF SAN DIEGO

DATE OF NOTICE: June 14, 2007

NOTICE OF PUBLIC HEARING
PLANNING COMMISSION

DATE OF HEARING:	**June 28, 2007**
TIME OF HEARING:	**9:00 A.M.**
LOCATION OF HEARING:	**Council Chambers, 12th Floor, City Administration Building, 202 C Street, San Diego, California 92101**
PROJECT TYPE:	**Conditional Use Permit/Planned Development Permit**
PROJECT NUMBER:	**92067**
PROJECT NAME:	**AMERICAN TOWER – 30TH PLACE**
APPLICANT:	**Jim Kelly, American Tower Corporation**
COMMUNITY PLAN AREA:	**Southeastern San Diego**
COUNCIL DISTRICT:	**District 8**
CITY PROJECT MANAGER:	**Karen Lynch-Ashcraft, Development Project Manager**
PHONE NUMBER:	**(619) 446-5351**

As a property owner, tenant or person who has requested notice, you should know that the Planning Commission will hold a public hearing to approve, conditionally approve, or deny an application for a wireless communication facility consisting of an existing 130 foot high monopole and a 500 square foot equipment shelter, originally approved by CUP No. 84-0469, which expired on November 20, 2004. The facility is located at 797 1/3 30th Place between Highway-94 and G Street.

The decision of the Planning Commission is final unless the project is appealed to the City Council. In order to appeal the decision of the Planning Commission you must be present at the public hearing and file a speaker slip concerning the application or have expressed interest by writing to the Planning Commission before the close of the public hearing. To file an appeal, contact the City Clerk at 202 "C" Street, Second Floor. The appeal must be made within 10 working days of the Planning Commission decision. If you wish to challenge the City's action on the above proceedings in court, you may be limited to addressing only those issues you or someone else have raised at the public hearing described in this notice, or written in correspondence to the City at or before the public hearing.

Exhibit 11
Page 83 of 84

draft for clerk's office

City of San Diego

NOTICE OF PUBLIC HEARING
APPEAL TO CITY COUNCIL
DEVELOPMENT SERVICES DEPARTMENT

As a property owner, tenant, or person who has requested notice, you should know that a public hearing will be held by the City Council to consider an appeal on an application for a wireless communication facility consisting of an existing 130 foot high monopole and a 500 square foot equipment shelter, originally approved by CUP No. 84-0469, which expired on November 20, 2004. The project site is located at 797 1/3 30th Place. **The decision of the City Council is final.**

DATE OF HEARING:	**September 24, 2007**
TIME OF HEARING:	**2:00 P.M.**
LOCATION OF HEARING:	**Council Chambers, 12th Floor, City Administration Building, 202 C Street, San Diego, CA 92101**
PROJECT TYPE:	**Conditional Use Permit and Planned Development Permit**
PROJECT NUMBER:	**92067**
PROJECT NAME:	**AMERICAN TOWER CORPORATION - 30TH PLACE**
APPLICANT NAME:	**Jim Kelly, American Tower Corporation**
COMMUNITY PLANNING AREA:	**Southeastern San Diego**
COUNCIL DISTRICT:	**District 8**
CITY PROJECT MANAGER:	**Karen Lynch-Ashcraft, Development Project Manager**
PHONE NUMBER:	**(619) 446-5351**

If you wish to challenge the City's action on the above proceedings in court, you may be limited to addressing only those issues you or someone else have raised at the public hearing described in this notice, or written correspondence to the City at or before the public hearing.

This project was determined to be categorically exempt from the California Environmental Quality Act on February 8, 2006 and the opportunity to appeal that determination ended February 23, 2006.

If you have any questions about this matter, you may contact the City Project Manager listed above.

Date of Notice: September 6, 2007

Exhibit 7
Page 14 of 14

This information will be made available in alternative formats upon request. To request an agenda in alternative format or to request a sign language or oral interpreter for the meeting, call the Disability Services Program Coordinator at (619) 236-5979 at least five working days prior to the meeting to insure availability. Assistive Listening Devices (ALD's) are available for the meeting upon request.

Job Order No. 42-5781

Revised 03/10/06 ps
document I

THE CITY OF SAN DIEGO

Date of Notice: June 14, 2007

NOTICE OF PUBLIC HEARING

PLANNING COMMISSION RECOMMENDATION

DATE OF HEARING:	**June 28, 2007**
TIME OF HEARING:	**9:00 A.M.**
LOCATION OF HEARING:	**Council Chambers, 12th Floor, City Administration Building, 202 C Street, San Diego, California**
PROJECT TYPE:	**Conditional Use Permit/Site Development Permit**
PROJECT NUMBER:	**91178**
PROJECT NAME:	**AMERICAN TOWER – MT. ADA**
APPLICANT:	**Jim Kelly, American Tower Corporation**
COMMUNITY PLAN AREA:	**Clairemont Mesa**
COUNCIL DISTRICT:	**District 6**
CITY PROJECT MANAGER:	**Karen Lynch-Ashcraft, Development Project Manager**
PHONE NUMBER:	**(619) 446-5351**

As a property owner, tenant or person who has requested notice, you should know that the Planning Commission will hold a public hearing to **recommend** approval, conditional approval, or denial to the City Council for a wireless communication facility consisting of an existing, expired 145 foot high monopole and a 625 square foot equipment shelter, originally approved by CUP No. 83-0629, which expired on November 20, 2004 . The facility is located at 6426 Mt. Ada Road between Mt. Rias Place and Mt. Albertine Avenue.

The decision to approve, conditionally approve, modify or deny the wireless communication facility will be made by the City Council at a future public hearing. You will also receive a notice of the City Council public hearing.

If you have any questions after reviewing this information, you can contact the City Project Manager listed above.

This information will be made available in alternative formats upon request. To request an agenda in alternative format or to request a sign language or oral interpreter for the meeting, call the Disability Services

Exhibit 4
Page 84 of 84

Program Coordinator at (619) 236-5979 at least five working days prior to the meeting to insure availability. Assistive Listening Devices (ALD's) arc available for the meeting upon request.

Job Order No. 42-5718

Revised 11/02/04 dcj
document1

THE CITY OF SAN DIEGO

NOTICE OF PUBLIC HEARING
CITY COUNCIL

DATE OF HEARING:	**September 24, 2007**
TIME OF HEARING:	**2:00 P.M.**
LOCATION OF HEARING:	**Council Chambers, 12th Floor, City Administration Building, 202 C Street, San Diego, California 92101**
PROJECT TYPE:	**Conditional Use Permit and Site Development Permit**
PROJECT NUMBER:	**91178**
PROJECT NAME:	**AMERICAN TOWER CORPORATION – MT. ADA**
APPLICANT:	**Jim Kelly, American Tower Corporation**
COMMUNITY PLAN AREA:	**Clairemont Mesa**
COUNCIL DISTRICT:	**District 6**
CITY PROJECT MANAGER:	**Karen Lynch-Ashcraft, Development Project Manager**
PHONE NUMBER:	**(619) 446-5351**

As a property owner, tenant, or person who has requested notice, you should know that a public hearing will be held by the City Council to consider an application for a wireless communication facility consisting of an existing, expired 145 foot high monopole and a 572 square foot equipment shelter, originally approved by CUP No. 83-0629, which expired on November 20, 2004. The facility is located at 6426 Mt. Ada Road between Mt. Rias Place and Mt. Albertine Avenue. **The decision of the City Council is final.**

If you wish to challenge the City's action on the above proceedings in court, you may be limited to addressing only those issues you or someone else have raised at the public hearing described in this notice, or written correspondence to the City at or before the public hearing.

This project was determined to be categorically exempt from the California Environmental Quality Act on January 23, 2006 and the opportunity to appeal that determination ended February 7, 2006.

If you have any questions about this matter, you may contact the City Project Manager listed above.

Date of Notice: September 6, 2007

Exhibit 10
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This information will be made available in alternative formats upon request. To request an agenda in alternative format or to request a sign language or oral interpreter for the meeting, call the Disability Services Program Coordinator at (619) 236-5979 at least five working days prior to the meeting to insure availability.. Assistive Listening Devices (ALD's) are available for the meeting upon request.

Job Order No. 42-5718

Revised 03/10/06 ps
document1

Exhibit 10
Page 84 of 84

ORIGINAL

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

2008 MAY 14 PM 3:45

CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

BY DEPUTY

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff Kent County, DE
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Channel Law Group, LLP
100 Oceangate, Suite 1400, Long Beach, CA 90802

Attorneys (If Known)

'08 CV 0864 JM WMc BY FAX

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 47 U.S.C. 332

Brief description of cause: See attachment "A".

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $**

CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☑ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Hon. Larry A. Burns DOCKET NUMBER 07cv0399, 08cv0435

DATE 05/13/2008 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 150902 AMOUNT $350 APPLYING IFP ____ JUDGE ____ MAG. JUDGE ____

TB 05/14/08

EC

ATTACHMENT "A" – CAUSES OF ACTION

COUNT I	--	Violation of Section 332(c)(7)(B)(i)(I) of the Telecommunications Act (47 U.S.C. § 332(c)(7)(B)(i)(I))
COUNT II	--	Violation of Section 332(c)(7)(B)(i)(II) of the Telecommunications Act (47 U.S.C. § 332(c)(7)(B)(i)(II))
COUNT III	--	Violation of Section 332(c)(7)(B)(ii) (47 U.S.C. § 332(c)(7)(B)(ii))
COUNT IV	--	Violation of Section 332(c)(7)(B)(iii) (47 U.S.C. § 332(c)(7)(B)(iii))
COUNT V	--	Mandamus (Inherent Authority or Cal. Code Civ. Pro. § 1094.5)
COUNT VI	--	Violation of Equal Protection under the Fourteenth Amendment of the United States Constitution (U.S. Const. Am. XIV)
COUNT VII	--	Deemed Approval of Permits under the California Permit Streamlining Act (Gov. Code § 65950(b)

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

150902 - MB

May 14, 2008
15:47:44

Civ Fil Non-Pris
USAO #.: 08CV0864 CIVIL FILING
Judge..: JEFFREY T MILLER
Amount.: $350.00 CK
Check#.: BC3021961

Total-> $350.00

FROM: CIVIL FILING